



State of Idaho Purchasing Reference Guide

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1. INTRODUCTION

1.1 Purpose

The purpose of this publication is to acquaint State of Idaho Purchasing Personnel with the statutes, rules, and processes that govern public purchasing and to serve as reference material. For the purpose of this guide, purchasing personnel are considered to be anyone charged with responsibility of purchasing goods and services for their respective agencies. It may include storekeepers, inventory specialists, buyers, senior buyers, purchasing agents, accountants, finance officers, bureau chiefs, or others with direct responsibility for purchasing.

Public purchasing is an evolutionary process and state purchasing can be called a laboratory where new ideas and different approaches are tested and refined. Some of the biggest challenges facing state government are the conservation of resources and cost containment while procuring high-technology products and services, professional services, environmentally sensitive products and services, privatization of public functions, and the financing and administration of programs previously handled by the federal government. This variety of purchasing activity demands well-thought-out policies and continuing improvement and refinement of procurement techniques. Your suggestions for improvement and cooperation are solicited and always welcomed.

1.2 Idaho Purchasing History

The format and growth of public purchasing was influenced by the procurement experience of both World Wars, which identified shortcomings in government acquisition programs and provided a crash course in remedial action. The federal establishment and most state's central procurement programs started because of the impetus of World War I. Most state procurement laws date from the 1920s. In the west, Idaho, and California were the first to adopt a centralized purchasing plan with Oregon, Washington, Montana, and Utah following closely behind.

1919

The 1919 Idaho Session Laws established the Bureau of Supplies under the Department of Public Works and provided for the appointment of a purchasing agent. The preamble of chapter 128 reads as follows: *"The purpose of this act is to secure the orderly and economical administration of the business affairs of the various state departments and institutions, publicity and fairness in awarding contracts for all supplies, and in keeping of accurate cost accounts."* In addition to purchasing for state departments, the Bureau of Supplies also purchased supplies for the Department of Public Welfare's Sanitariums and cooperated with the State Board of Education to purchase supplies and develop contracts for the educational institutions.

Here are a few highlights taken from the 1925-26 Department of Public Works Biannual Report:

"Following is a partial list of the purchases made during the last biennium: 32,000 tons of coal; 200,000 pounds of dressed beef; 120 tons of whole and ground feed; 900,000 pounds of flour, 90,000 pounds of germeal, oatmeal, etc.; 25,000 pounds of evaporated prunes; 10,000 pounds of honey; 3,000 gallons of vinegar; 20,000 electric light lamps; 20 cars of cement; other building materials, equipment and appliances; power and machinery; farm and maintenance equipment and supplies; stationery; books; typewriters, calculating machines and other office appliances; printing; provisions, clothing, dry goods and

shoes; hardware and kitchen supplies; live stock; in short, material and supplies of every description. Experience has demonstrated that large savings can be effected in the purchase of office supplies, such as paper, carbon paper, typewriter ribbons, pencils, inks, erasers, pins, fasteners and rubber bands by buying in large quantities. Actual practice has shown that the reduction is from 10 percent to 40 percent. For example, the state now holds a contract for carbon paper at \$1 per box, for typewriter ribbons at \$4.17 per dozen, slack coal \$1 per ton f.o.b. mines, lump coal \$2.65 per ton f.o.b. mines, typewriters at a discount of 20 per cent from list, and electric lamps at 29 per cent from list.

Pursuing the policy of dealing with Idaho producers, manufacturers and dealers, state institutions are at present using Idaho manufactured brooms and shoes, Idaho canned fruits and vegetables, Idaho vinegar, Idaho packed coffee and spices, and other items involving Idaho labor, and to this end a 5 per cent differential has been allowed to Idaho bidders.

Methods of operation in any purchasing bureau may be criticized, but the principle of centralized buying has proved its worth."

1927

In 1927 the Office of the State Purchasing Agent was created and all powers of the former Bureau of Supplies was transferred to that office. The purchasing agent now reported directly to the Governor rather than to the Department of Public Works.

1939

In 1939 the duties and procedures for the Office of the State Purchasing Agent were expanded and defined in greater detail and an Advisory Board, consisting of the Governor and two legislators, was created to directly oversee the operations of the purchasing agent.

1974

1974 saw the creation of the present day Division of Purchasing under the Department of Administration and the further defining of authority and responsibilities. The Division of Purchasing currently consists of an Administrator, Office Manager, Purchasing Officers, Buyers, Clerical Supervisor and Clerical Staff.

1990's and Beyond

Personal computers, voice mail, e-mail, internet access, electronic commerce, and automation of purchasing systems are recent developments that have changed the face of public purchasing. Who can say what wondrous inventions the future holds? Whatever it is, someone will need to buy it. Sound public purchasing will no doubt be required for a long time to come.

2. UNDERSTANDING PUBLIC PURCHASING

2.1 Definition

PUBLIC PURCHASING: The process of purchasing or procurement of an item or service of the proper utility, that meets the needs of the jurisdiction, at the best price, from the most responsive and responsible vendor.

The “process” of purchasing and procurement encompasses all activities for obtaining goods and services, including planning, preparation and processing of a requisition, through source selection, solicitation, evaluation, award and contract formation, to receipt and acceptance of delivery, payment and property disposition. Public purchasing, therefore, is made up of many people joining together to accomplish a common goal or task to fulfill the needs of the public.

2.2 Purpose of the Division of Purchasing

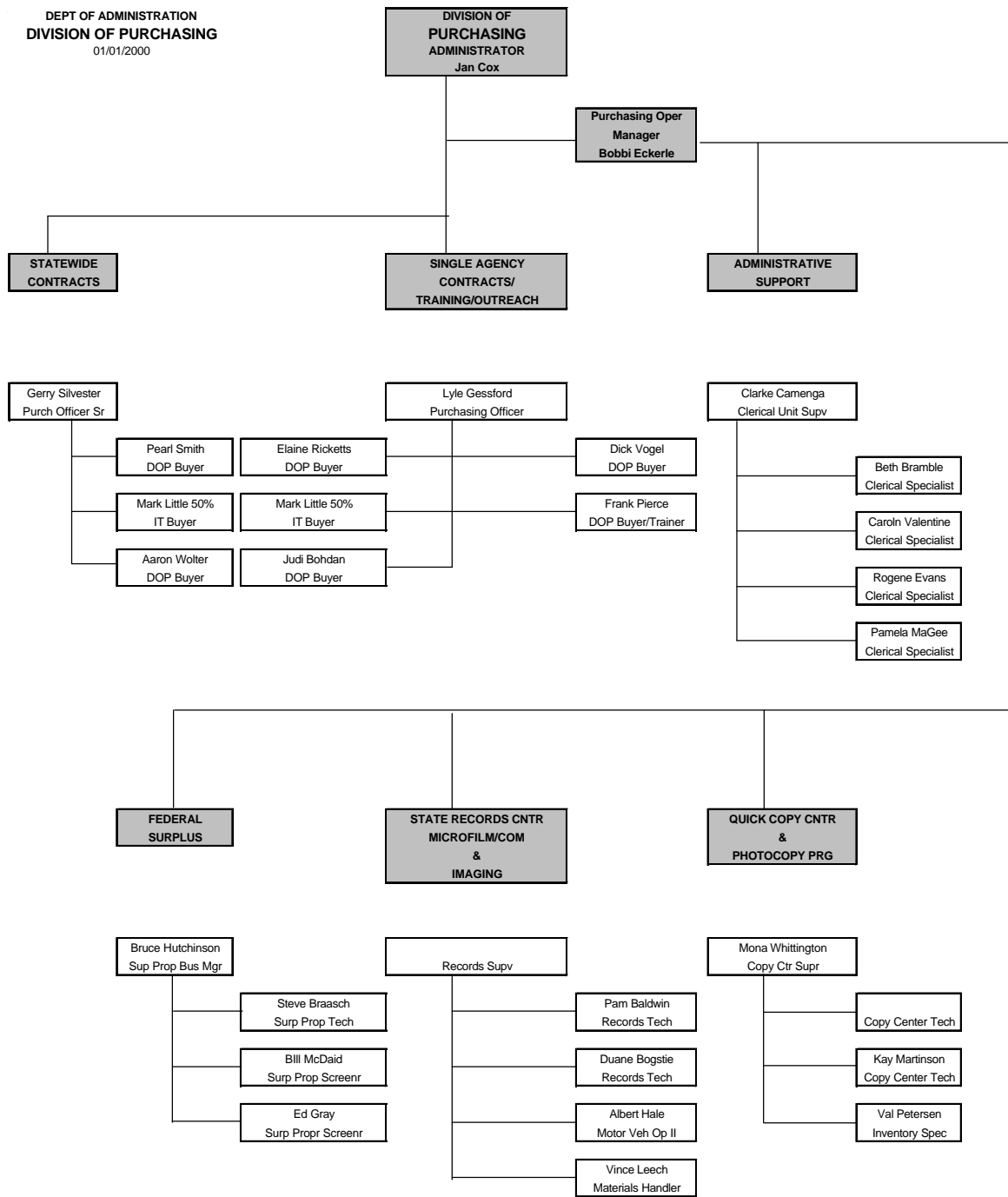
Why is there a Division of Purchasing? Your first thought may be economy of scale or volume purchasing and that is true in most cases. However, bigger is not always better and there are valid arguments for local purchasing by agencies. The Division of Purchasing has delegated levels of purchasing authority to many agencies. Where volume purchasing is desirable and reduced costs are significant, the Division of Purchasing develops and implements statewide contracts. To assure compliance to state statutes, the Division of Purchasing handles or conducts large dollar purchases.

The *primary* functions of the Division of Purchasing are purchasing management, thoughtful policy implementation, adequate training, and monitoring of purchases in accordance with state statutes, for the commonweal of the state and the conservation of the taxpayer's dollars. To be effective, the Division of Purchasing strives to reduce the cost of government, inspire public confidence in government, improve the quality and timeliness of services rendered by agencies, provide a meaningful partnership with the business community and promote honesty and integrity throughout government operations. The centralized purchasing process becomes much more than a technical, clerical exercise. It is a *managerial* function that crosses agency lines, with a primary mandate to conserve public funds.

2.3 Division of Purchasing Organizational Chart

The Division of Purchasing consists of Purchasing, Federal Surplus, the State Records Center, and the Quick Copy Center. The following is an organizational chart current as of January 2000.

DEPT OF ADMINISTRATION
DIVISION OF PURCHASING
01/01/2000



2.4 Mission Statement of The Division of Purchasing

To purchase goods and services by securing maximum value for the tax dollar and to provide service to state agencies and the public in a timely and courteous manner through ethical and impartial relations with vendors and state personnel.

2.5 Idaho Statutes

The Idaho Statutes that govern purchasing activity are found in *Idaho Code, Title 67 State Government and State Affairs, Chapter 57, Department of Administration*, specifically 67-5714 through 67-5745C .

The following is a brief summary of the contents of the Statutes. To view the complete text see the publication *Idaho Code, Volume 11* or [CLICK HERE](#).

<u>67-5714</u>	DIVISION OF PURCHASING created (1974)
<u>67-5715</u>	PURPOSE OF ACT - establishes competitive meeting
<u>67-5716</u>	DEFINITION OF TERMS
<u>67-5717</u>	POWERS AND DUTIES OF THE ADMINISTRATION OF THE DIVISION OF PURCHASING -gives the Administrator authority to make rules and regulations, to purchase items and make contracts
<u>67-5718</u>	REQUISITIONS FOR PROPERTY -- NOTICE -- FORM -- GUARANTEE - PROCEDURE FOR BIDDING -states dollar amounts for bidding procedures
<u>67-5718A</u>	ACQUISITION OF INFORMATION TECHNOLOGY PROPERTY BY CONTRACT -- AWARD TO MORE THAN ONE BIDDER -- STANDARDS FOR MULTIPLE AWARDS -- APPROVAL BY ADMINISTRATOR -allows multiple contract awards for information technology and defines information technology and telecommunications
<u>67-5720</u>	ACQUISITION OF MINOR ITEMS -- EMERGENCY PURCHASES
<u>67-5721</u>	ACQUISITION OF NONOWNED PROPERTY -- OPTION TO ACQUIRE -- DETERMINATION OF OPTION COSTS
<u>67-5722</u>	SALE, TRADE-IN OR EXCHANGE OF STATE PERSONAL PROPERTY
<u>67-5723</u>	DISCOUNTS -- NEGOTIATIONS FOR REQUIRED RULES, REGULATIONS AND PROCEDURES
<u>67-5724</u>	CONTRACTS WITH FEDERAL GOVERNMENT OR ITS AGENCIES EXEMPT FROM CERTAIN PROVISIONS
<u>67-5724A</u>	ACQUISITION OF PROPERTY -- GENERAL SERVICES ADMINISTRATION FEDERAL SUPPLY SCHEDULE CONTRACTS
<u>67-5725</u>	PRESERVATION OF RECORDS -- WRITTEN CONTRACTS -- VOID CONTRACTS
<u>67-5726</u>	PROHIBITIONS - transfer of contracts, influencing the award of contracts, failure to use open (statewide) contracts
<u>67-5727</u>	MAINTENANCE OF STOCKS -- REQUISITIONS FROM STOCKS -- PAYMENT
<u>67-5727A</u>	PARTICIPATION IN GROUP DISCOUNT PURCHASING
<u>67-5728</u>	REVOLVING ACCOUNT FOR PURCHASE OF PROPERTY
<u>67-5729</u>	APPLICATION OF ADMINISTRATIVE PROCEDURE ACT
<u>67-5730</u>	REGISTRATION OF VENDORS -- RULES AND PROCEDURES -- FAILURE TO BID -- DISQUALIFICATION OF VENDORS -- NOTICE
<u>67-5732</u>	RULES - Administrator to make rules for specifications, testing procedures, equipment performance, specialized property

<u>67-5732A</u>	SALE OF SURPLUS PROPERTY AUTHORIZED
<u>67-5733</u>	DIVISION OF PURCHASING -- APPEALS
<u>67-5734</u>	PENALTIES
	- relating to violation of 67-5726
<u>67-5735</u>	PROCESSING -- REIMBURSEMENT OF CONTRACTOR
	- Paying bills
<u>67-5736</u>	ACCEPTANCE
	-property ordered must meet specifications
<u>67-5737</u>	PROVISIONS OF THIS CHAPTER CONTROLLING -- SEVERABILITY
<u>67-5740</u>	ADDITIONAL AUTHORITY AND DUTIES OF THE ADMINISTRATOR OF THE DIVISION OF PURCHASING
	- Federal Surplus Property
<u>67-5741</u>	DELEGATION OF DUTIES -- BONDING OF AGENCY PERSONNEL
	- delegation of purchasing authority
<u>67-5742</u>	DELEGATION OF AUTHORITY TO ACQUIRE SURPLUS PROPERTY
<u>67-5743</u>	TRANSFER CHARGES
<u>67-5744</u>	SURPLUS PROPERTY FUND MAINTAINED -- CHARGES AND FEES, DEPOSITION
<u>67-5745</u>	DECLARATION OF PURPOSE
	- information technology and telecommunications
<u>67-5745A</u>	DEFINITIONS
	- information technology and telecommunications
<u>67-5745B</u>	INFORMATION TECHNOLOGY RESOURCE MANAGEMENT COUNCIL -- COMPOSITION -- APPOINTMENT AND TERM OF OFFICE -- REIMBURSEMENT -- CONTRACTING FOR NECESSARY SERVICES
<u>67-5745C</u>	GENERAL POWERS AND DUTIES OF THE COUNCIL

2.6 Division of Purchasing Rules

The Division of Purchasing Rules are found in *Idaho Administrative Code, IDAPA 38, Title 05, Chapter 01* and are available for viewing or printing in their entirety at the Idaho Purchasing web site at www2.state.id.us/adm/purchasing. [CLICK HERE to access](#). Each chapter of this guide also includes the applicable rules specific to that subject.

Please note that all references to purchasing, procurement, rules, and contracts herein relate to activities administered by the Division of Purchasing and not to activities by the Division of Public Works (construction and building projects). Even though the Division of Public Works operates under many of the same statutes and rules, they have different purchasing authorities, rules for vendors, etc. For information regarding public works projects contact the Division of Public Works at 334-3453.

3. THE ACQUISITION PROCESS

3.1 Seeing the Whole Picture

The acquisition process is much more than simply buying something. It includes all activities from planning, preparation and processing of a requisition, solicitation, evaluation, award and contract formation, to receipt and acceptance of delivery, payment, inventory tracking and property disposition. Regardless of whether the product or service required is processed by the agency under delegated authority or sent to the Division of Purchasing for processing, the workflow is essentially the same. Here are some things that need to be considered when making any purchase:

- Identifying the need and product or service that will best fulfill that need. Keeping in mind cost containment, what is the product or service that that best fulfills the job requirements? This may require that the agency purchasing personnel meet with end user(s) to identify needs and solutions.
- Development of specifications that describe the characteristics of a product or service being sought. Consideration should be given to suitability and to overall cost effectiveness in addition to acceptability and initial price. Specifications by their nature, set limits and thereby eliminate or restrict items that are outside the boundaries drawn. Specifications should be written to encourage, not discourage, competition consistent with seeking overall economy for the purpose intended. The goal is to invite maximum reasonable competition.
- Bidding or seeking price quotations from a number of possible suppliers as per the rules established by the Division of Purchasing and your agency.
- Reviewing the bids or offers to determine overall economy for the intended use of the product or scope of the services. The award should always go to the lowest responsive bidder who meets the specifications of the product or services you requested.
- Purchasing or contracting for the product or service in accordance with the rules of the Division of Purchasing and your agency.
- Receiving the product or service and verifying that it meets the requirements of the purchase order or contract.
- Processing the invoice through appropriate channels in a timely manner.
- Adding the item to the inventory system if necessary. Idaho Code 67-5746 requires that all agencies maintain an inventory of all personal property that an agency owns or is responsible for.
- Disposal of item at the end of its usable lifespan or after it has been declared surplus property. Detailed instructions for surplus property disposal are published by the State Board of Examiners.
- Keeping good records that detail all of the above considerations as required by Idaho Code, Division of Purchasing Rules, and individual agencies. Public purchasing requires that most

records be made available for public inspection upon request, so good detailed recordkeeping is essential.

3.2 Purchasing and Procurement Methods

3.2.1 Purchasing

Acquisition of property is divided into three major types of purchasing:

State Contracts. Contracts for property and/or services established and administered by Division on behalf of agencies. The contract document will identify the condition(s) under which usage by agencies is required.

Single Acquisitions. Acquisition of property for which an agency does not have statutory authority, non-delegated authority or for which there is no existing state contract. Single acquisitions must be initiated by submitting a requisition to the Division. If a proprietary item is required, the agency must attach adequate justification.

Small Purchases or Special Delegation. The Division, or Purchasing Activity pursuant to written delegation of authority, may acquire property which costs less than the sealed bid amount established by *Idaho Code 67-5718*. A special delegation is a special delegation to a buyer within an agency to make a single acquisition of property. All small purchases and special delegations must be made in accordance with the small purchase rules herein.

3.2.2 Procurement

Procurement is defined as the process of obtaining property for state use by lease, rent, or any manner other than by purchase or gift. The term may also refer to a proposed or actual solicitation.

3.3 Public Agency Clause

Many statewide and single agency contracts allow “public agencies” to utilize these contracts by statute and the terms of the state contract. Public agencies are defined in *Idaho Code 67-2327* as any city or political subdivision of this state, including, but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties, cities or any political subdivision created under the laws of the state of Idaho; any agency of the state government; or any city or political subdivision of another state.

4. DELEGATED AUTHORITY

Idaho Code Section 67-5717 charges the Administrator of the Division of Purchasing with the responsibility to purchase all state property and enter into contracts, leases, and rentals. For minor property costing less than \$1,500, not available on statewide contracts, all agencies have been granted authority to purchase such property without competitive solicitations, in accordance with good business practices and in the best interests of the state. For purchase of property and services exceeding \$1,500 and not available on statewide contracts, the Administrator has granted limited delegated purchasing authority in various amounts, not to exceed \$25,000, to agencies that demonstrate a need for such purchases and a competence for accomplishing the purchase according to state statutes and published purchasing rules and regulations.

4.1 Requirements for Delegated Authority

State agencies, on an individual basis, may request delegated purchasing authority or increases in their delegated authority. For an agency to receive delegated authority or increased delegated authority, it must comply with the following:

- Demonstrate a need for the dollar limit authority requested.
- Have approval from the agency head.
- Submit a plan of purchasing responsibility which identifies the individual(s) designated as the agencies chief purchasing official and shows adequate staffing possessing capability to handle the delegated authority. The individual chiefly responsible for purchasing must demonstrate sufficient purchasing ability to accommodate the agency's particular needs and be knowledgeable of public procurement's issues and trends.
- Submit an agency purchasing policy and procedure manual showing compliance with State Statutes and Division of Purchasing Rules.
- Require that all personnel involved in the purchasing process participate in training sessions, workshops, or conferences offered by the Division of Purchasing. The agency shall work to promote professionalism by its purchasing staff through continued training.
- Submit monthly purchasing reports as identified by the Division of Purchasing.
- Submit to purchasing reviews conducted by the Division of Purchasing for the purpose of determining effectiveness and performance of the agency's purchasing system and evaluating compliance with State Statutes and Division of Purchasing Rules.
- Consistently comply with Idaho Code, Section 67-5714 et. seq., and Division of Purchasing Rules, IDAPA 383.05.01, relative to the conduct of purchasing activities.

After reviewing the above requirements, the Division of Purchasing will assess the needs and capabilities of the requesting agency and grant or deny delegated purchasing authority. Once approved, agencies are encouraged to redelegate purchase authority to division, bureau, section, and program levels consistent with their capability to monitor such activity.

4.2 Removal or Reduction of Delegated Authority

Delegated authority is subject to review by the Division of Purchasing and may be reduced or rescinded for failure to comply with any of the above requirements or failure to correct noted deficiencies within a reasonable time period. Delegated authority removal or reduction may also occur should an agency's chief purchasing officer position be downgraded or become vacant.

4.3 Division of Purchasing Rules Regarding Delegated Authority

IDAPA 38.05.01

- 021. DELEGATION OF AUTHORITY OF ADMINISTRATOR. The Division shall administer the acquisition of all property for state agencies except those for which the agencies have separate statutory purchasing authority. The Administrator may delegate in writing such authority as deemed appropriate to any employees of the Division or of a Purchasing Activity, respectively. Such delegations shall remain in effect unless modified or until revoked in writing. All delegations must be given in writing prior to the acquisition of the property. All acquisitions must be made according to these purchasing rules.
- 022. AUTHORITY OF DELEGATED PURCHASES.
 - 01. General. The Administrator may delegate to any using agency the authority to make a purchase expected to be less than the amount set forth in Section 67-5718, Idaho Code, for property including services. Any such delegation shall be in writing and may be limited as the Administrator directs.
 - 02. Purchasing Activities Shall Make Small Purchases Pursuant to Purchasing Rules. Purchasing activities shall exercise such authority as may be delegated and such small purchases shall be made pursuant to these rules. Such delegated small purchases shall be subject to periodic reporting or special requests as directed by the Administrator.
- 023. AUTHORITY OF BUYERS OR PURCHASING OFFICERS. Buyers or Purchasing officers may take any action of a purchasing nature to advance economic well-being and efficient operation of the state or agency so long as that action is not in conflict with the Idaho Code or the Rules of the Division.

5. THE VENDOR REGISTRATION SYSTEM

5.1 Vendor Registration Required

The State of Idaho utilizes an automated list of vendors for bid solicitations as a means of fostering competition. The vendor list is a means to identify prospective suppliers with any type of solicitation. It is imperative that all vendors interested in competing for the State's business become registered with the Division of Purchasing by completing and returning the Bidders Mailing List Application Form. *Idaho Code, Section 67-5730*, reads in part as follows:

"No vendor shall be allowed to submit a bid unless such vendor is qualified and has registered prior to the time of bid opening...A ten dollar (\$10) biennial registration fee shall accompany the request, which moneys shall be deposited in the general account of the state treasury."

5.2 Bidders Mailing List Application

The application form requires potential vendors to supply information such as; company name, address, FIN or SS number, contact persons names, bidding zone information, applicant's business category, and indicate the commodities they would be interested in providing to the state through our competitive bidding system.

Upon receipt of the Application Form and the ten (\$10) registration fee, the Division of Purchasing sends a detailed list of each commodity category requested and the publication "Vendor's Guide...How To Do Business With The State of Idaho". The vendor must indicate the specific items it can supply and return this list to the Division of Purchasing.

When bids are prepared, vendors are chosen based on geographic location, past performance, suggestions made by agencies, and randomly chosen from the detailed commodity code lists for the products they supply. Being a registered vendor does not mean that vendors will automatically receive all bid solicitations. However, bids are posted on a Bid Board at the Division of Purchasing and on the internet at the Idaho Purchasing Homepage) so that all interested vendors may have an equal opportunity to submit a bid.

The Division of Purchasing requires that vendors send notification of any changes in company status, including change of name, address, telephone number, personnel listed on the application, and addition or deletions of commodities supplied. Failure to keep vendor information current may result in the vendor not receiving bid solicitations or even removal from the vendor file.

5.3 Disqualification of Vendors

As identified in *Idaho Code 67-5730*, vendors may be disqualified and removed from the registered vendor list for periods of six (6) months to five (5) years for any of the following reasons:

- Failure to perform according to the terms of any agreement;
- Attempts by whatever means to cause acquisition specifications to be drawn so as to favor a specific vendor;

- Use of the provisions of the purchasing statutes to obstruct or unreasonably delay acquisitions by the State (obstruction is defined as a lack of success in more than fifty percent (50%) of the specification challenges made in each of three (3) different acquisitions during any twenty-four (24) month period);
- Perjury in a vendor disqualification hearing;
- Conspiracy with a State employee or officer to influence, or attempt to influence the award of a contract, or to deprive a registered vendor of an acquisition award; and
- To knowingly violate the provisions of the purchasing statutes.

Division of Purchasing Rules further identify the following reason why a vendor may be removed from the registered vendor list:

- violation of the Division's statutes or rules;
- unreasonable number of "no bid" responses;
- any material failure to perform, e.g., delivery, quality;
- any significant detrimental change in supplier status, e.g., financial condition, lines carried, service ability;
- unauthorized product substitution, or representation of an alternate as an equal which is not; or
- other illegal acts.

5.4 Division of Purchasing Rules Regarding Vendor Registration

IDAPA 38.05.01

064. REGISTERED VENDOR LISTS. Vendors must be registered with the Division in accordance with the applicable law and these rules. Vendor lists, categorized according to specific categories of purchased goods, services and property, shall be maintained and updated by the Division. Such lists are used by buyers to determine vendors from which to solicit bids. Due to cost considerations not all vendors are solicited for each bid invitation. In order to be considered for inclusion on a vendor list, vendors must apply to the Division.
400. REGISTRATION OF VENDORS REQUIRED. No vendor shall be allowed to submit a bid, proposal, or quotation unless such vendor is currently registered with the Division.
401. REGISTRATION REQUIREMENTS.
01. Registration Required. Vendors shall register with the Division for all classes of property which the vendors will sell or supply to the state. Vendor registration forms are included in the Division's Vendor Information and Registration Packet and may be obtained by contacting the Division. A vendor may register by mail or in person.
02. Registration Form. The registration form shall contain, at a minimum the following information:

- a. name of the vendor, including any fictitious or "doing business as" (d.b.a.) designations;
- b. an official office address where bid notices or solicitations are to be mailed;
- c. a telephone number at which the vendor may be reached by purchasing staff;
- d. a statement of how the business is organized, i.e., limited liability company, joint venture, association, partnership, sole proprietorship or corporation, if a corporation the state of incorporation and whether it has offices in Idaho;
- e. list the class or classes of property the vendor desires to sell or supply to the state;
- f. State of Idaho sales tax identification number;
- g. geographic zones within the state in which the vendor wants to bid;
- h. the nature of the business (manufacturer, distributor, jobber, retailer, grower, etc.);
- i. business address, which is not a post office box, in Idaho, or if located elsewhere the state of domicile and the business address of the vendor;
- j. how long the vendor has been in business; and other similar information as may be required in the Vendor Information and Registration Packet as it may be edited from time to time by the Administrator.

03. Registration Fees. Bids submitted to the state will only be considered if the vendors have registered and supplied the ten dollar (\$10) biennial registration fee prior to the time of the bid opening. At the time of the bid opening, all bids received by vendors who have failed to become registered vendors shall be rejected.

- 402. CHANGES TO VENDOR REGISTRATION. At any time, by simple written communications to the Division, a registered vendor may add or delete general classes of property which the vendor would sell or supply to the state.
- 403. VERIFICATION OF REGISTRATION. The internal procedure to be followed in verification of registered vendors at the bid opening time is as follows: Check the vendor's name against the alphabetical listing of registered vendors and verify that the vendor's name appears.
- 404. AVAILABILITY OF VENDOR REGISTRATION LIST. The vendor registration system shall be automated and will be updated no less frequently than once per month. The system will be reproduced both by vendor name and commodity category. Copies of the system shall be available to various state agencies on a cost basis. All agencies under the jurisdiction of the Division are required to use the official centralized vendor registration system data.
- 405. MULTIPLE REGISTRATION LISTINGS. Vendors wishing to be registered vendors, using identical names, but different address and telephone numbers, shall be allowed to register the different addresses and telephone numbers. A separate ten dollar (\$10) biennial fee and vendor registration form will be required for each additional location.
- 406. INCOMPLETE REGISTRATION. Vendor Registration Packets that are received in an incomplete manner shall be returned to the vendor. An incomplete vendor registration

application shall be interpreted as not meeting the registration requirements, and the company submitting it shall not be a registered vendor.

407. **REGISTRATION FEE REQUIRED.** The ten dollar (\$10) biennial registration fee shall be required, together with the vendor registration form, before the vendor's registration is complete.

408. **REGISTRATION RENEWAL.** A notice of renewal shall be mailed to the registered vendor at least sixty (60) days prior to the expiration date of the vendor's registration. Failure to renew the registration and pay the biennial registration fee shall result in the removal of the vendor from the list of qualified vendors.

409. **REMOVAL OR SUSPENSION.**

01. **Removal of Vendors.** The Administrator may remove or suspend a vendor from the list of registered vendors for cause. Examples of reasons for removal or suspension include, but are not limited to the following:

- a. violation of the Division's statutes or rules;
- b. unreasonable number of "no bid" responses;
- c. any material failure to perform, e.g., delivery, quality;
- d. any significant detrimental change in supplier status, e.g., financial condition, lines carried, service ability;
- e. unauthorized product substitution, or representation of an alternate as an equal which is not; or
- f. other illegal acts.

02. **Removal or Suspension Notification.** Any vendor so removed or suspended in accordance with these rules shall be notified in writing of the reason(s) therefore, the conditions of any removal or suspension, and/or corrective action required for reinstatement. A vendor shall be notified by registered mail within ten (10) days of removal or suspension and may, within thirty (30) days of the receipt of such notice, request of the Director of the Department of Administration a hearing before a determination officer. Any hearings shall be held in accordance with Chapter 52, Title 67, Idaho Code and these rules.

410. **REAPPLICATION OR REINSTATEMENT.** If a vendor's application to be placed on the registered vendor list has been refused, or if a vendor has been removed or suspended from such list, that vendor may reapply to be placed on such list, or apply for reinstatement when the conditions for reinstatement have been met. After qualifying again as a registered vendor, the vendor shall be required to submit both a new vendor registration form and a ten (\$10) dollar biennial registration fee.

6. DEVELOPING SPECIFICATIONS

6.1 Introduction

Specifications are one of the most important elements of the purchasing process. The preparation of good specifications is probably the most difficult function in the process. Inadequate or poorly written specifications are the cause of many bidder challenges and can considerably delay the purchasing process. This information is designed to define specifications and assist agencies by providing guidelines to good specification writing.

The Division of Purchasing has final responsibility for specifications issued as part of formal Invitation to Bids or Request for Proposals. The specification may originate with an agency, an outside consultant, another governmental entity, or a professional society or association, however, the Division of Purchasing will review the specifications for suitability and competitiveness. Some agencies have the view that they are authorized to spend to the limits of their budgets and should be able to buy whatever product or service they prefer. However, the Division of Purchasing view is to conserve public funds and to refrain from buying a more costly product or service or larger quantity than is actually needed. The Division of Purchasing is obligated to try to obtain both product and price competition.

6.2 Definition of Specification

The term “specification” refers to a description of the characteristics of a commodity or service required or desired. Specifically, it is defined as the explicit requirements furnished with a solicitation upon which a purchase order or contract is to be based. Specifications set forth the characteristics of the property and services to be purchased so as to enable the vendor to determine and understand that which is to be supplied. This information may be in the form of a description of the physical, functional, or performance characteristics, a reference brand name or both. It may include a description of any requirement for inspecting, testing, or preparing a material, equipment, supplies, or service for delivery. Specifications may be incorporated by reference and/or through attachment to the solicitation. Specifications are written so as to not restrict bidding but encourage open competition. The goal is to invite maximum reasonable competition.

6.3 Effective Specification Writing

The degree to which specifications are open and unrestrictive directly affects the type and extent of the competition desired. Specifications provide for quality control, that is, they assure that the quality of an item is suited to its intended use and eliminates unnecessary features or frills.

Specifications are public records; they serve to keep the purchasing open by allowing the public to see exactly what is being purchased. Specifications are used during the evaluation of bids to determine whether or not bids are responsive.

Some of the difficulty in preparing specifications stems from the fact that the State can seldom dictate the *exact* characteristics of the products it wants. The requirements of an agency are usually not sufficient to justify a special or name brand product. Consequently, specifications are developed around a manufacturer's product specifications. If the specification did not have to satisfy state statutes requiring competitive bidding, the task would be much easier. The immense variety of items purchased by the State further complicates specification writing. Products are improved, new products are introduced, and

the needs of the public change. Consequently, the function of preparing and updating specifications must be an ongoing one.

To provide a common basis for bidding, specifications should set out the essential characteristics of the item being purchased, so that all bidders know exactly what is wanted. If an essential requirement is left out of the specification, an award may be made for a product that does not meet the needs of the purchaser. The suitability of the product may not become apparent until much later. Situations such as these are seldom resolved to anyone's satisfaction and can be a waste of taxpayers money. If such an omission is discovered in time, the bid should be canceled, specifications corrected, and new bids solicited.

Avoid overspecifying or underspecifying. Items should be able to perform as necessary without unessential frills. Requiring unnecessary features can result in specifications so restrictive that they can defeat competition and increase the cost of the item. Remember that all purchasing activities are subject to public and vendor scrutiny.

If a specification allows both an equal opportunity to bid and objectivity of selection by the bidder, then the specification is serving its intent. A straightforward and fair evaluation based on good specifications will persuade vendors to bid.

6.4 How to Develop Specifications

Consideration should be given to suitability and to overall cost effectiveness in addition to acceptability and initial price. Specifications by their nature, set limits and thereby eliminate or restrict items that are outside the boundaries drawn. Specifications should be written to encourage, not discourage, competition consistent with seeking overall economy for the purpose intended.

The function of specifications is to provide a basis for obtaining a commodity or service that will satisfy a particular need at an economical cost. A good specification should do these things:

- Identify minimum requirements.
- Allow for a competitive bid.
- List reproducible test methods to be used in testing for compliance with specifications.
- Provide for an equitable award at the lowest possible cost.

To assure that your specifications meet the above criteria, use the following checklist:

- Specifications should be clear and accurate, yet simple. They should NOT be so specific that a loophole eliminates competition and allows a bidder to take advantage of the purchaser.
- Specifications should be understandable to both the bidder and the purchaser.
- Specifications should be as flexible as possible. Inflexible specifications defeat the competitive bid process.
- Specifications should be legible and concise.
- Specifications should be capable of being checked. Specifications that are written in such a way that a product or service offered cannot be checked as meeting specifications is of little value and results in confusion.

- The specification should be reasonable in its tolerances. Unnecessary precision is expensive.
- The specification should be as fair to the bidder as possible and allow for competitive bidding by several bidders.

6.5 Specification Sources

There are many available sources that can be of assistance to you when you are developing your specifications. Here are suggestions for gathering specification information:

- Collect as much information as possible from the end user as to the function and performance of the requested product. Use their expertise and knowledge.
- Collect product information from the industry (brochures, catalogs, specs, etc.). Many manufacturers list their catalogs and product specifications on the internet.
- Look for standards and test information from professional societies where available.
- Look for specification information from other government entities. Check to see if standard specifications already exist. Use the internet and e-mail for research. Many states have standard specifications listed on the internet.
- Call on other “experts” in the purchasing community for help.
- NIGP: The National Institute of Governmental Purchasing maintains a library of over 10,000 specifications developed by federal, state, and local government purchasing entities in the U.S., and Federal, Provincial, and local entities in Canada.

6.6 Types of Specifications

There are several different types of specifications to address the thing being purchased in a number of ways. The great variety of goods and services bought by the State necessitates the use of all of the following types of specifications:

6.6.1 Standard

Where items that have similar usage are needed frequently or repetitively, standard specifications are developed. This establishes performance and quality levels, reduces the variety of things bought, simplifies inventories, allows for large volume contracts to be developed, and eliminates duplicative specification writing. Most statewide contracts use standard specifications to describe products required.

The standard specification details the characteristics that the item must possess without naming a brand or model.

6.6.2 Non-Standard

Most purchases use non-standard or have no standard specifications developed for the item or service required and are used on a one time basis. A non-standard specification can be anything

from a simple brand-name-or-equal description to a statement of work for professional services. Preparing them constitutes a large portion of the daily work.

6.6.3 Brand Name

Brand name specifications cite a brand name, model number, or some other designation that identifies a specific product of a manufacturer. Brand name specifications are not considered good specifications, but they do have a legitimate use in public purchasing. An example might be when a particular brand name item must be purchased in order to be compatible with existing equipment.

The most restrictive type of specification, they have the effect of limiting bidding to a single product and are only used when only one product will meet an intended need.

6.6.4 Brand Name “or Equal”

In the absence of standard specifications, the State often uses manufacturers' brand or model designations as a standard. Brand names are used to indicate general performance and quality levels. Unless otherwise noted, it is understood that other brands or models will be accepted on an "or equal" basis.

To aid in communicating the desired quality level to bidders, an effort should be made to use brand name designations that are known throughout the industry or have specifications that are readily available. If a bidder does not know which of his products is comparable to the designated brand names, he cannot bid intelligently and may not bid at all. Bidders customarily know their competition and can usually tell without too much difficulty which of their brands or models will be considered equal. Still, the bidder cannot be sure which features of the item will be considered crucial in making the award. In addition to the brand name, the specifications should name the minimum salient characteristics to be used in comparing brands and making the award.

Vendors who represent other brands or models as "or equal" which clearly do not meet this standard of quality or use, may be dropped from the bid list. It is the responsibility of the bidder to furnish with the original bid or proposal submission sufficient data for the State to determine if the goods or services offered conform to the bid specifications. The purchaser reserves the right to determine equivalency.

6.6.5 Detailed Design-type or Custom-made

Design specifications set the requirements for the item to be purchased by detailing the characteristics that the item must possess. These specifications are used to determine how a product is to be fabricated or constructed and is primarily used where a structure or product has to be specially made to meet a unique requirement. Design specifications have precise characteristics that can limit competition and generally do not accommodate rapidly changing technology. Their use is limited.

6.6.6 Functional or Performance-type

The use of performance type specifications has steadily increased. This type of specification states the function that a user wishes to achieve and can contain both elements of design and

performance. The emphasis is on what the product does, how well it performs, and at what cost for its intended use. This encourages ingenuity, innovation, and cost reduction.

Writing performance specifications and evaluating bids requires a different approach and point of view than the more traditional one. Instead of establishing common denominators by looking for equivalencies, one must look for differences that provide equal or better performance and lower costs.

6.6.7 Qualified Product List or Approved Brands

A QPL specification is one based on certain tests or other criteria for comparing or examining and approving products before seeking competitive bids. It specifies acceptable products by brand name, model number, or whatever designation is necessary to precisely identify a certain product. Continued documentation of acceptable products is necessary as products tend to change or be modified and may or may not continue to be acceptable.

The purpose of this type of specification is to determine, in advance, those products which are acceptable. The evaluation of these bids is greatly simplified, the price becomes the main factor for award. One of the main reasons for using a QPL is to avoid the problems that occur where a low bidder offers a product, and the products conformance to specifications is unknown and difficult to ascertain. One disadvantage of QPLs is that they can limit competition, and over time, the list can become outdated as the quality of products improve or new, better products are developed.

Producing a qualified product list involves developing original specifications and field testing similar products for acceptability and can take a considerable amount of time and expertise. But, in the long run, it can reduce the amount of time testing products because several products can be tested simultaneously. Once a product is accepted for the list, it does require further testing unless specifications change. Manufacturers must agree to inform purchasing of any significant changes to their product for reevaluation and continued acceptance on the qualified product list.

6.6.8 Samples and Technical Data

This type of specification requires that bidders offer their price and a sample of their product and technical data meeting general descriptions. In some instances, the comparison and testing of samples can effectively substitute for a detailed specification.

Samples are tested and evaluated on a price/performance, cost-effective basis. Examples of products for which this approach is useful are floor waxes, paints, disinfectants, cleaning agents, and art materials. All samples and test results should be retained for delivery compliance of products ordered.

6.6.9 Alternatives and Optional Items

Alternate specifications are sometimes needed in the public interest to consider comparisons of costs or to keep awards within the funds available. They can be used to obtain wider competition and other advantages.

Optional items are features that may be adapted to a piece of basic equipment and may enhance performance, may be needed under certain circumstances, or may be luxury items.

Careful consideration should be given as to whether optional items will be purchased or not and if the cost of such optional items should be included in the award consideration.

6.7 Basic Contents of Specifications

The following information is presented as a basic outline for specifications. Sections may be added or deleted as required by the product specification being developed.

6.7.1 Scope, Classification, or Description

The first words or lines of a specification should be a general description, classification, or scope of the product desired and the intended or desired use of the item.

6.7.2 List of Requirements

These requirements should identify measurable physical, functional, and quality characteristics that meet the requirements. This may include a detailed list of characteristics, such as: sizes, physical dimensions, weights, percent and type of ingredients, types and grades of materials, standard of workmanship, or basic design.

The text should be clear, simple language, free of vague terms or those subject to variation in interpretation. The use of abbreviations should be restricted to those in common usage and not subject to possible misunderstanding

6.7.3 Shall, May, Should, or Will?

Use “shall” to express a requirement binding on the contractor or the purchaser.

Use “may” or “should” to express nonmandatory provisions.

Use “will” to express future requirements or when certain conditions are met.

6.7.4 Definition of Terms

The necessity for definition of terms can usually be avoided with good specifications. However, in those cases where proper interpretation is necessary or agreement as to definition of terms is a key part of the specifications, such definitions should be included.

6.7.5 Measurements

All terms relating to measurements (gauge, capacity, volume, etc.) should be used in accordance with established precedent and trade practice. Review the document and make every effort to replace words with numbers or use words and numbers in combination (one (1) two (2)).

Whenever you use numbers instead of words, communication is truly enhanced. All measuring and testing equipment is designed to provide specific numerical answers.

6.7.6 Figures and Tables

Figures, illustrations, graphs, etc. can often describe the item more clearly and accurately than text. They should be used as much as possible.

6.7.7 References to other Specifications or Publications

References to other specifications or publications should be limited to the federal government, commercial organizations, technical societies, etc., which are widely recognized and accepted by industry. Examples of recognized organizations are the American Society for Testing and Materials (ASTM) Standards and the American Society of Mechanical Engineers (ASME).

6.7.8 Group Terms

Group terms are designations with established precedent and trade practice, such as: type, grade, class, and composition. These terms are defined as follows:

- Type: Implies design, model, shape, etc. of commodities.
- Grade: Implies quality of a commodity.
- Class: Implies mechanical or other characteristics that are not in quality of grade.
- Composition: Implies chemical differences in commodities.
- Other: Other terms such as: style, color, form, weight, size, etc., are also used as group terms.

6.7.9 Sampling, Inspection, and Test Procedures

When samples are required, it should be clearly identified as a requirement in the specifications. All samples and test results should be retained for delivery compliance of products ordered.

When possible, a test inspection plan should be developed and included in the specification.

6.7.10 Packaging and Delivery Information

Where specifications differ from standard commercial-sized packages, this should be clearly defined. Custom packaging may increase the cost of the product.

Special or unusual delivery dates or delivery points should be listed. Many times, items need to be shipped to a variety of locations within the State. A complete list of delivery addresses should be included in the specifications so that a bidder may take into account delivery costs and submit an accurate bid.

6.8 Division of Purchasing Rules Regarding Specifications

IDAPA 38.05.01

250. STANDARD SPECIFICATIONS. Specifications contained in the Invitation to Bid will, where practical, be nonrestrictive so as to provide an equal basis for competition and participation by an optimum number of qualified bidders.
251. SPECIFICATIONS, GENERAL PURPOSE AND POLICIES.

01. Written specifications shall accompany any requisition submitted to the Division for acquisitions that exceed the sealed bid limit established by Idaho Code, Section 67-5718. To the extent practicable, written specifications shall also be used for small purchases.

02. Purpose. Specifications shall be drafted with the objective of clearly describing the agency's requirements and of encouraging competition. The purpose of a specification is to serve as a basis for obtaining a supply, service, or property adequate and suitable for the agency's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.

03. Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the agency. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met.

04. Preference for Commercially Available Products. It is the general policy that requirements be satisfied by standard commercial products whenever practicable.

252. AVAILABILITY OF DOCUMENTS. In accordance with the Idaho Public Records Act, specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.

253. EMERGENCY AUTHORITY. In the event of an emergency, as determined by the Director or the Administrator, the agency may purchase property or services by any reasonable means, with any available specifications, without regard to the provision of these rules.

254. PROCEDURES FOR THE DEVELOPMENT OF SPECIFICATIONS.

01. Provisions of General Application.

a. Application of Section. These provisions apply to all persons who may prepare a specification.

b. Specification of Alternates May Be Included. A specification may provide alternate descriptions of supplies, services, or property where two or more design, functional, or performance criteria will satisfactorily meet the agency's requirements.

c. Contractual Requirements Not to Be Included. To the extent feasible, a specification shall not include any solicitation or contract term or condition such as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.

d. Use of Existing Specifications. If a specification for a common or general use item has been developed or a qualified products list has been developed for a particular supply, service, property, or need, it shall be used unless the Administrator makes a written determination that its use is not in the agency's best interest and that another specification shall be used.

e. Review of Specifications. The Administrator should provide for the periodic review of specifications to determine whether any existing specification needs revision, or a new specification is needed to reflect changes in:

- i. the state of the art;
- ii. the characteristics of the available supplies, services, or property; or
- iii. needs of the agency.

f. Others May Prepare Specifications. The Administrator may allow others to prepare specifications for the agency's use in making purchases when there will be no substantial conflict of interest involved and it is otherwise in the best interests of the agency as determined by the buyer.

02. Special Additional Procedures.

a. Specifications for Common or General Use Items.

- i. Preparation and Utilization. A standard specification for common or general use shall, to the extent practicable, be prepared and utilized when a supply, service, or property is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply or service item as commercially produced or provided remain relatively stable while the frequency or volume of acquisitions is significant, or where the agency's recurring needs require uniquely designed or specially produced items.
- ii. Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the Division.
- iii. Revisions and Cancellations. All revisions to or cancellations of specifications for common or general use items may be made upon approval of the Division.

b. Brand Name or Equal Specification.

- i. Brand name or equal specifications may be used when the buyer determines that such a specification is in the agency's best interest.
- ii. Designation of Several Brands. Brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" references and shall state that products substantially equivalent to those designated will be considered for award.
- iii. Required Characteristics. Unless the buyer authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required.
- iv. Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

c. Brand Name Specification.

i. Use. Since use of a brand name specification is restrictive, such a specification may be used when the Administrator or designee makes a written determination. Such determination may be in any form, such as a purchase evaluation, or a statement of single manufacturer justification. The written statement must state specific reasons for use of the brand name specification.

ii. Competition. The Administrator shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the acquisition shall be made under Section 67-5720 of the Idaho Code.

d. Qualified Products List.

i. Use. A qualified products list may be developed with the approval of the Administrator when testing or examination of the property prior to issuance of the solicitation is desirable or necessary in order to satisfy agency requirements.

ii. Solicitation. When developing a qualified products list, all registered vendors in the commodity listing shall be solicited to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer products for consideration in accordance with any schedule or procedure established for this purpose.

iii. Public Inspection of Testing. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior established requirements. Public inspection of written testing data will be allowed in accordance with the Idaho Public Records Act. However, qualified products lists' test results shall be made public, but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.

255. INTERPRETATION OF SPECIFICATIONS. In the event of discrepancies or omissions in the bid specifications, or doubt as to their meaning, the vendor shall immediately notify the Purchasing Activity in writing. In response, written instructions and/or addenda as required shall be sent to vendors known by the buyer to have received the initial bid document. The Purchasing Activity will not be responsible for oral interpretations not confirmed in writing by the Purchasing Activity prior to the time stipulated in the bid opening.

7. REQUEST FOR QUOTATION SMALL PURCHASES - INFORMAL QUOTES

Single purchases of property or services not exceeding one (1) year costing less than \$25,000 are considered to be “small purchases” and are purchased or procured utilizing informal quotation methods.

7.1 Methods

Informal solicitations are called *Request For Quotations* and may be obtained verbally, by written RFQ's, by facsimile, or by telephone. Verbal quotations should be recorded for future evaluation (who did you talk to, name, business, phone number, price quoted, etc.).

7.2 Property or Services Less Than \$1,500

For purchases expected to cost less than \$1,500 no competitive bidding is required. Agencies may make purchases as they see fit, in accordance with good business practice and in the best interests of the state. All agencies have authority to make purchases under \$1,500. Procedures and rules regarding purchases under \$1,500 are determined by each agency.

7.3 Property or Services Between \$1,500 And \$25,000

Purchases over \$1,500 and under \$25,000 require a minimum of three (3) competitive solicitations from registered vendors with a significant Idaho economic presence as defined by Idaho Code and require that the agency have some level of delegated purchasing authority. Agencies without delegated authority must send all requests expecting to cost over \$1,500 or any amount exceeding their authority limits to the Division of Purchasing for processing. Services exceeding one (1) year, regardless of cost, also must be sent to the Division of Purchasing.

Please note that *Professional and Consultant Services* have special rules discussed in Section 12.3.

7.4 Division of Purchasing Rules Regarding Small Purchases

IDAPA 38.05.01

184. SMALL PURCHASE PROCEDURES, GENERAL

01. General. Small purchase procedures may be used by purchasing activities for those purchases or procurements that are less than the amounts established by Idaho Code Section 67-5718. Excluding the Division, absent a general or specific delegation by the Administrator, no Purchasing Activity, using the small purchase authority and/or small purchase procedures of these rules, shall procure (i.e. lease, rent, etc.) property or services or enter into contracts for periods exceeding one year (including renewal or extension periods). Purchasing Activity purchases of property and services will be limited to single purchase transactions unless other contract types are specifically authorized by the Administrator.

02. Solicitation Terms. For small purchase procedures, the following terms shall have the meaning as indicated:

a. Request for Quotation. The document or form, including any attachments, whether physically attached or incorporated by reference, specifications, and terms and conditions used by the Purchasing Activity for small purchases.

b. Quotation or Quote. An offer from a registered vendor to supply property or services under a contract or purchase order in response to a Request for Quotations.

03. Form of Request for Quotation and/or Quote. Unless otherwise prohibited by the Purchasing Activity buyer, the Request for Quotation and/or Quote may be written, oral, telephonic, or facsimile.

04. Quoting Time. The quoting time shall be determined by the buyer and should provide sufficient time for the vendor to prepare and return a quotation. The amount of time shall take into consideration such factors as complexity, urgency, availability of property and information, and number and location of vendors.

05. Public Notice. To the extent practicable and time allows, the Purchasing Activity shall publicly post or make available in a public area at its primary purchasing location a copy of any written Requests for Quotation.

06. Receipt of Quotations. Quotations must be received by close of the normal business day on the date indicated unless a specific time is indicated. If facsimile quotations are authorized by the Purchasing Activity or the Request for Quotations, the Purchasing Activity does not assume any responsibility for the failure or unavailability of facsimile transmission or equipment. Late quotations will not be considered. Time of receipt will be determined by the official time stamp or receipt mechanism located at the Purchasing Activity.

185. AUTHORITY TO MAKE SMALL PURCHASES

01. Amount. The Division or a Purchasing Activity shall use these procedures if the acquisition is estimated to be less than the amounts established in Idaho Code Section 67-5718 or unless the Division determines it advantageous to use the formal sealed bid procedures set forth in these rules.

02. Existing State or Statewide Contracts. Supplies, services, or other property available under single agency or statewide contracts or similar agreements shall be purchased under such agreements in accordance with the provisions or requirements for use thereof and not under this subpart unless otherwise authorized by the Administrator.

03. Available From One Source Only. If the property or service is available only from one source, the sole source purchase method set forth in these rules shall be used.

04. Splitting of Requirements. Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies.

186. SMALL PURCHASES OF PROPERTY OR SERVICES BETWEEN \$1,500 AND \$25,000

01. Procedure. Insofar as it is practical and possible for small purchases of property or general services (excluding professional or consultant services) between \$1,500 and \$25,000, no less than three registered vendors having a significant Idaho presence as defined by Idaho Code

shall be solicited to submit telephone, facsimile, or written quotations. Award shall be made to the responsible and responsive bidder offering the lowest acceptable quotation. The purchasing file will be fully documented for unacceptable quotations. Should it be impractical or impossible to solicit three (3) registered vendors, the file shall be fully documented and every effort should still be made to obtain the most favorable terms, conditions and price possible for the state.

02. Records. The names of the registered vendors offering quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

187. SMALL PURCHASES OF \$1,500 OR LESS. To facilitate the purchase of minor items of property in the open market, if the property to be acquired can be expected to cost less than \$1,500, such property may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state.

8. INVITATION TO BID LARGE PURCHASES - FORMAL BIDS

Single purchases of property or services exceeding one (1) year and/or expected to cost over \$25,000 are considered to be “large purchases” and purchased or procured with formal methods.

8.1 Methods

Formal solicitations are called *Invitation To Bids*. They are processed by the Division of Purchasing. They contain specifications, terms and conditions, instructions to bidders, evaluation criteria, bidding sheets, and signature pages. They require public notification and sealed bid responses from bidders to be opened publicly at specified times.

8.2 Property or Services Between \$25,000 and \$200,000

Purchases over \$25,000 and under \$200,000 require a minimum of ten (10) competitive bid solicitations from registered vendors.

8.3 Property or Services Exceeding \$200,000

Purchases over \$200,000 require that all registered vendors in the commodity receive a bid solicitation or are offered an opportunity to bid in a pre-bid survey.

8.4 Standard Information Required on Invitations To Bid

The following standard information is included as a part of all Invitations to Bid. It consists of bid award information, general information, conditions and instructions, and standard terms and conditions. Additional or special terms and conditions are added as needed.

8.4.1 Bid Award Information Policy

NOTE: New information for completion and submission of bids or proposals (bid solicitations) is detailed in the following paragraphs. It is the bidder's responsibility to timely submit the bid in a properly marked envelope, prior to the scheduled bid opening, for receipt in sufficient time to allow the bid to be time and date stamped at the office of the Division of Purchasing.

We urge vendors to attend the public bid openings and record the bid information at that time. At the public bid opening for Requests for Proposals (RFP), only the names of bidders will be announced and no other information will be available until award of the RFP. It is normally not possible for the staff to immediately analyze bids after the bid opening. THEREFORE, the following policy and procedure has been adopted as being the best method for handling bid result inquiries. This procedure will yield the requested information in the most expeditious manner possible for all parties concerned.

POLICY: PERSONS REQUESTING BID TABULATION INFORMATION ARE TO EITHER WRITE (please include stamped, self-addressed envelope), FAX, PHONE, or VISIT THE

DIVISION OF PURCHASING OFFICE AND REQUEST THE BID TABULATION INFORMATION FROM THE RECEPTIONIST. NO BID TABULATION OR AWARD INFORMATION WILL BE GIVEN OVER THE PHONE..

Please give the BID NUMBER, BID TITLE, AND BID OPENING DATE information to the RECEPTIONIST. THIS INFORMATION CAN BE FOUND AT THE TOP OF THE BID SOLICITATION PAGE. This is the only way we can trace your request and prepare a response.

It takes time to tabulate and process bids. Please observe the following times when requesting bid tabulation information.

Bids over \$25,000, please wait at least 5 working days after the bid opening to request bid tabulation information.

Term Contract Bids, please wait at least 10 working days after the bid opening to request bid tabulation information.

Request for Proposals, please wait at least 20 working days after the bid opening to request bid tabulation information.

PLEASE, DO NOT REQUEST ANY BID AWARD INFORMATION ON THE TELEPHONE. NO TELEPHONE INFORMATION WILL BE GIVEN

BID REQUIREMENTS: The following requirements are for preparation, submission and consideration of bids:

- a. Registered Vendors: To be eligible to submit a valid bid, the vendor must be a Registered Vendor PRIOR to the scheduled bid opening date and time. If you are submitting the Vendor Registration-Bidders Mailing List Application and the required \$10 biennial registration fee, DO NOT INCLUDE these items in your bid envelope or package! The Vendor Registration application MUST BE received PRIOR to the bid opening date and time.
- b. Bid Completion: The Invitation To Bid or Request for Proposal signature page must contain an ORIGINAL HANDWRITTEN signature executed in INK and be returned with the relevant bid solicitation documents. Bids must be completed either in ink or typewritten. Bid forms or figures written in pencil are not acceptable. Mistakes should not be erased but may be crossed out and corrections inserted next to the errors and initialed IN INK by the person signing the bid. THIS INCLUDES BUT IS NOT LIMITED TO WHITEOUT CORRECTION FLUID AND TYPEWRITER CORRECTION TAPE.
- c. Bid Submittal: To assure your bid is opened at the proper time, the lower left corner of your SEALED bid envelope must indicate the item being bid, bid opening date and time, and the bid number. This information is found on the Bid Solicitation form. DO NOT FAX YOUR BID.
- d. Hand-Delivered Bids: Hand-delivered bids must be received at the Division of Purchasing reception desk and time and date stamped prior to the bid opening date and time.
- e. Alteration of Bid Prohibited: Bids may not be completed, amended or clarified on the face of the bid after the official bid opening time.

8.4.2 General Information for Bidders and Proposers

1. **AUTHORITY TO PURCHASE:** The Administrator for the Division of Purchasing, Department of Administration, or the Administrator's delegates are the only statutory agents authorized to execute contracts, purchase orders, leases, etc., for the purchase of supplies, materials, equipment, etc., except for those agencies, amounts, or commodities specifically exempt from purchase by statute.
2. **BID AWARDS:** Contracts may only be awarded to the "Lowest Responsible Bidder." The Lowest Responsible Bidder is defined by Idaho Code as "The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price."
3. **SPECIFICATIONS:** Specifications are written so as to describe the property the State wants to purchase or procure. If you are unsure of what the State wants, please present written questions to the appropriate purchasing official. Idaho Code, Section 67-5726 (3) reads: "No officer or employee shall conspire with a vendor or its agent, and no vendor or its agent shall conspire with an officer or employee, to influence or attempt to influence the award of a contract, or to deprive or attempt to deprive a registered vendor of an acquisition award." Idaho Code, Section 67-5730 (2) reads: "Vendors may be disqualified for any of the following reasons: (b) Attempts by whatever means to cause acquisition specifications to be drawn so as to favor a specific vendor." The state is prohibited from accepting property which does not meet the minimum bid specifications pursuant to Idaho Code Section 67-5726(4) and Section 67-5736.
4. **LAWS:** The laws under which the State purchases goods and services are found in the Idaho Code, Title 67, Chapter 57, Section 67-5714 through Section 67-5744. Attention is directed to the fact that it is the vendor's responsibility to conform to ALL applicable Federal, State and local statutes or other applicable legal requirements.
5. **PREFERENCE FOR IDAHO SUPPLIERS FOR PURCHASES** (Idaho Code Section 67-2349): The law requires providing a reciprocal preference for Idaho domiciled bidders on purchases of materials, supplies, equipment, or services. The law and any applicable percentage preference are ONLY applicable to bidders domiciled in a state granting THEIR in-state bidders a preference. It is not applicable to domiciled bidders in states without a preference law or a reciprocal preference law. Vendors MUST provide information on the state of domicile of their company.
6. **COMPETITION:** Unless otherwise noted in the bidding documents, all purchases made pursuant to this contract are for the internal use of government only and no purchase under this contract will be resold to the general public at retail. Upon request the Division of Purchasing will issue a certification that all purchases made under this contract are intended for the internal use of government and will not be resold to the general public at retail.
7. **ADMINISTRATIVE APPEALS:** The laws applicable to administrative appeals are set forth at Section 67-5733, Idaho Code. In summary, they are:
 - a. **Specification Appeal:** Beginning with the day a registered vendor receives the bid solicitation document and ending ten (10) working days later, the vendor may challenge the specifications. The vendor is to notify, in writing, the Administrator of the Division of Purchasing of his intention to challenge the specification and state the exact nature of the challenge describing the location

of the challenged portion or clause in the specification document and explaining why the provision should be struck, added or altered, and contain suggested corrections. Upon receipt of the challenge, the Administrator for the Division of Purchasing may either deny the challenge or request the Director of the Department of Administration to appoint a determinations officer. If a determinations officer is appointed, the determinations officer shall send a copy of the challenge to all vendors invited to bid asking for the vendors' response within five (5) days agreeing or disagreeing with the challenge. The determinations officer may require that the specifications be rewritten, rewrite the specifications himself and/or reject all or any part of the challenge.

b. **Bid Rejection Appeal:** Within five (5) working days following receipt of notice of rejection, a bidder may appeal the decision to the Director of the Department of Administration. This appeal is only available to a vendor whose bid is found non-responsive (i.e., a bid which does not comply with the bid invitation and specifications). It does not apply to a vendor whose bid is considered but who is determined not to be the lowest responsible bidder. The Director may either deny the appeal or appoint a determinations officer to review the record and submit a recommended order to the Director. Upon receipt of the determination officer's written recommendation, the Director may sustain, modify or reverse the non-responsive bid decision.

c. **Bid Award Appeal:** A vendor whose bid is considered may, within five (5) working days following receipt of notice that he is not the lowest responsible bidder, apply to the Director of the Department of Administration for appointment of a determinations officer. The appeal must set forth in specific terms the reason why the Administrator's lowest responsible bidder decision is erroneous. Upon receipt of the appeal, the Director shall, within three (3) working days, either (1) deny the appeal; (2) appoint a determinations officer to review the record and provide written recommendations; or (3) appoint a determinations officer with authority to conduct a contested case hearing within the context of the Idaho Administrative Procedures Act. Upon receipt of the determinations officer's written recommended order, the Director shall either sustain, modify or reverse the Division of Purchasing decision.

8.4.3 Conditions and Instructions to Bidders and Proposers

1. **REGISTERED VENDORS:** Title 67, Chapter 57, Section 67-5730 of the Idaho Code reads in part as follows: "No vendor shall be allowed to submit a bid unless such vendor is qualified and has registered PRIOR to the time of the bid opening A ten dollar (\$10) biennial registration fee shall accompany the request." Vendor Registration information and application forms (if the vendor is not already registered) may be found on the Division of Purchasing Internet web site at www2.state.id.us/adm/purchasing

2. **INCOMPLETE BID FORMS:** Incomplete and/or unsigned bid documents will be cause for non-acceptance and a finding of non-responsiveness. PHOTOCOPIED SIGNATURES or FACSIMILE SIGNATURES submitted by the bidder are NOT ACCEPTABLE.

3. **DISCOUNTS:** Discounts, when applicable, shall be shown in a single percentage figure e.g., 57-1/4% instead of 50, 10, and 5 percent. Be sure to show the net price to the state if a discount is given, (example: \$100.00 less 20% educational discount, Net price to the State is \$80.00). DISCOUNTS FOR PROMPT PAYMENT WILL BE ACCEPTED BUT CANNOT BE USED TO DETERMINE THE LOWEST BID.

4. **UNIT PRICES GOVERN:** Unit prices shall govern, but please extend the amount column, to avoid mistakes.

5. **IMPORTANT:** Prices must be given in the "unit of quantity" we ask for. Example: If we ask for an item by the "piece," bid by the "piece;" if we ask for it by the "foot," bid by the "foot," etc.

6. **FIRM PRICES:** No bid will be accepted if sent to us marked-"Price prevailing at time of delivery." After the date and time of bid closing, no price increase will be allowed, unless as otherwise stipulated by the State's bid solicitation documents.

7. **BID SUBMISSIONS:** Your bid envelope must be SEALED and plainly marked in the LOWER left corner with the following: (1) the name of the item or service being bid; (2) bid opening date and time; and (3) the bid number. Your return address should appear in the UPPER left corner. All bid sheets and the bid solicitation signature form containing an original authorized signature executing the bid must be submitted in a sealed envelope or package. (Do not respond to more than one bid number in the same envelope!) A bid submitted using "Express/Overnight" services must be shipped in a separate sealed inner envelope/package identified as stated above, and enclosed inside the "Express/Overnight" shipping container or package. No responsibility will attach to the State or any official or employee thereof, for the pre-opening of, post-opening of, or the failure to open a bid not properly addressed and identified.

8. **BID FORM:** Bidders shall use this bid proposal form when submitting their bid or proposal. Bids not submitted with the bid solicitation signature page form shall be found non-responsive and will not be considered. No additional or supplemental terms and conditions submitted by the bidder as part of the bid response shall be evaluated or considered. Any and all such additional terms and conditions shall have no force and effect and shall be inapplicable to this bid and ensuing contract. If additional or supplemental terms and conditions either intentionally or inadvertently appear separately in transmittal letters, specifications, literature, price lists or warranties, it is understood and agreed that the general and special conditions in this bid solicitation are the only conditions applicable to the bid or any ensuing contract and the bidder's authorized signature affixed to the bid solicitation signature form attests to this.

9. **LATE BIDS:** It is the bidder's responsibility to assure that the bid is delivered to the place designated for receipt of bids on or before the date and time specified for bid opening. Late bids will not be considered under any circumstances. The official time used in the receipt of bids is the prevailing local time as evidenced by the automatic time/date stamp located in the Division of Purchasing office. No responsibility will be assumed for delays in the delivery of mail by the U.S. Post Office, private couriers, or the intra-state mail system. **LATE BIDS WILL BE DECLARED REJECTED AND RETURNED TO THE BIDDER . NO DEVIATIONS WILL BE ALLOWED.**

10. **BID WITHDRAWALS:** Bids may be withdrawn by telegraphic request (no facsimile) or in writing on company letterhead signed by an authorized representative. The Division of Purchasing must receive bid withdrawal requests in correct form PRIOR to the bid opening date and time. Bids may also be withdrawn in person before bid closing time upon presentation of appropriate identification. After bid closing, bid withdrawals and/or cancellations may not be made unless legitimate error has been made, but such action makes bidder liable to "not responsible" finding. Unless otherwise stipulated by the State in other bid solicitation documents, the bid will remain firm and may not be withdrawn for sixty (60) days following the bid opening date.

11. **REJECTION OF BIDS:** The Administrator of the Division of Purchasing shall have the right to accept or reject all or any part of a bid or any and all bids when: (1) it is in the best interests of the State of Idaho; or (2) the bid does not meet the minimum bid specifications; or (3) the bid is not the lowest responsible bid; or (4) a finding is made based upon available evidence that a bidder is not responsible or otherwise capable of currently meeting specifications or assurance of

ability to fulfill contract performance; or (5) the item offered deviates to a major degree from the bid specifications, as determined by the Administrator (minor deviations, as determined by the Administrator, may be accepted as substantially meeting the bid requirements of the State of Idaho). Deviations will be considered major when such deviations appear to frustrate the competitive bidding process or provides a bidder an unfair advantage.

12. SPECIAL BRANDS: Special brands when named are only to indicate the standard of quality desired. Bidders may bid on their equal, except when specification or bid form requires no substitution. Offerings on other brands, if their equal, may be considered, but brands or descriptions of the equal must be plainly stated. "Equal" means any other brand that is equal in use, quality, economy, and performance to the brand listed. If the bidder lists a trade name and/or catalog number in the bid, the State will assume the item meets the specifications unless the bid clearly states it is an alternate, and describes specifically how it differs from the item specified. MULTIPLE OR ALTERNATE BIDS WILL NOT BE ACCEPTED UNLESS SO STATED IN THE SPECIFICATIONS.

13. BID SIGNATURES: The bid solicitation signature page form *must be* manually signed in ink by an authorized agent of the bidder *and* returned with your bid package. Bids must be submitted in writing. No oral, telephone, facsimile, telegraphic, or late bids will be considered.

14. BURDEN OF PROOF: ANY VARIATIONS of brand names or deviations from the specifications MUST BE CLEARLY STATED. It shall be the responsibility and burden of the bidder to furnish the State with the original bid submission sufficient data to determine if the goods or services offered conform to the bid specifications.

15. ORAL INFORMATION: The Division of Purchasing will not be responsible for any verbal or oral information given by the requisitioning agency regarding this bid. Questions concerning this bid must be directed in writing to the Division of Purchasing in sufficient time prior to the bid opening to permit an answer by the Division of Purchasing in writing. Bids deviating from the specifications contained herein by any means other than an authorized written addendum by the Division of Purchasing will be subject to rejection. Bidder's reliance on any oral representation is at the bidder's peril and the Division of Purchasing disclaims responsibility for oral representations. Questions will not be considered if received less than five (5) working days before the bid opening.

16. NO BID: If not submitting a bid, the bidder should respond by returning the bid solicitation signature page form, mark it "NO BID" and explain the reason, and complete the company name section at the bottom of the bid page. The bidder may be removed from the bidders list by failure to respond five (5) times in succession.

17. PAYMENT: Unless otherwise specified by the State in the bid documents, payment will be made after acceptance of the conforming property and after receipt by the requisitioning agency of a proper invoice. In general, no advance or progress payments will be made.

18. DOMICILE OF BIDDER: The bidder is to provide information WITH THE BID on the bidder's state of domicile. If the bidder is unsure of where the business is domiciled, the following "rules of thumb" may help:

- a. Corporation: Domiciled where chartered (state of incorporation).
- b. Partnership: Domiciled where permanent headquarters of business is located.
- c. Sole Proprietor: Domiciled where permanent headquarters of business is located.

19. **BID MODIFICATION:** Any bidder may modify his bid with a written communication over the signature of the bidder at any time prior to the closing of the bid. Notice of a modification of a bid may be submitted by telegraphic (not facsimile) communication, provided that the bid and the telegram are received prior to the closing date and time of the bid. This modification (if telegraphic) must be confirmed in writing, over an original signature of the bidder. The written confirmation of the modification must be mailed and postmarked no later than the closing date of the bid. The letter or telegram should be so worded as not to reveal the amount of the original bid. If the written confirmation of a modification is not received within two (2) days from the bid closing date, no consideration will be given to the telegraphic modification. Any telegraphic communication relative to a bid must state the bid closing date, time and the bid number. On written communications, the bid closing date, time, and bid number, should appear on the outside of the envelope to prevent premature disclosure of the information.

20. **AWARD METHOD:** Title 67, Chapter 57, Section 67-5716, Paragraph 12, of the Idaho Code defines the Lowest Responsible Bidder as, "The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications in determining the lowest acquisition price." When deemed to be in the best interest of the State, additional consideration may be given to the elements of discounts, supply location, quality of products or previous service, delivery time, or other elements that may be considered advantageous to the State.

21. **DELIVERY TIMES:** Bidders shall list, in the appropriate place on the bid document, the normal delivery times required for each item listed.

22. **FIRM BIDS:** Prices offered on the bid or included in the Agreement shall not fluctuate for the period of the Agreement, unless otherwise specified by the State in the bidding documents or other terms of the Agreement.

23. **PACKAGING:** Bidders are to list their standard packaging for the items listed if other than specified.

24. **SPECIFICATIONS:** Any variance from the specifications herein listed must be clearly pointed out in writing by the bidder, including information for comparison purposes; otherwise it will be considered that those items are in strict compliance with these specifications. To be valid, all such exceptions or variances taken must be submitted with or on the original bid document.

25. **DETERMINATION OF RESPONSIBILITY:** The State reserves the right to make reasonable inquiry to determine the responsibility of a bidder. Such requests may include but not be limited to financial statements, credit ratings, references, past performance, etc. The unreasonable failure of a bidder to promptly supply the requested information with respect to such bidder may result in disqualification of the bid. Except as otherwise provided by law, information furnished by the bidder pursuant to this provision may not be disclosed outside the Division of Purchasing or using agency without prior written consent of the bidder.

26. **PUBLIC RECORDS:** Idaho Public Records Law, Idaho code sections 9-337 through 9-348, allows the open inspection and copying of public records which may include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by an state or local agency regardless of the physical form or character. Certain information contained in your response to the state's Invitation to Bid or Request for Proposals may be considered a public record. The Public Records Law contains certain

exemptions found at Idaho Code section 9-340. One of the listed exemptions is that of trade secrets which include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons; and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy. Prices quoted in your bid or proposal are not a trade secret. If you consider any element of a bid or proposal to be a trade secret, or otherwise protected from disclosure, you must so indicate by marking each page of the pertinent document. Include the specific basis for the your request that it be treated as confidential. The state, to the extent allowed by law, will honor such a request. You will be required to defend any claim of trade secret or other basis for nondisclosure in the event of an administrative or judicial challenge to the state's nondisclosure. Any questions regarding the applicability of the Public Records Law should be addressed to the agency for its review or should be presented to your own legal counsel.

27. **PRIOR ACCEPTANCE OF DEFECTIVE BIDS:** Due to the limited resources of the State, the State generally will not completely review or analyze bids which on their faces fail to comply with the requirements of the bidding documents or which clearly are not the best bids, nor will the State generally investigate the references or qualifications of those who submit such bids. Therefore, any acknowledgment that the selection is complete shall not operate as a representation by the State that an unsuccessful bid was complete, sufficient, or lawful in any respect.

28. **LENGTH OF CONTRACT:** Idaho Code, Title 67, Chapter 57, Section 67-5717, Paragraph 9, reads as follows: "The Administrator of the Division of Purchasing may enter into contracts, including leases and rentals, for periods of time exceeding one (1) year provided that such contracts contain no penalty to or restriction upon the State in the event cancellation is necessitated by a lack of financing for any such contract or contracts."

29. **LEASE-PURCHASE OPTIONS:** Title 67, Chapter 57, Section 67-5721 of the Idaho Code reads, in part, as follows: "Any exercise of an option to acquire (goods, services, parts, supplies and equipment), or any other procedure which shall serve to pass title to the state where no passage of title existed before, shall be deemed to be a new acquisition and prior to execution all applicable provisions and procedures of this chapter [67-5714 through 67-5744] shall be exercised (NOTE: This provision is NOT applicable to Time Purchase Contracts).

8.4.4 Standard Terms and Conditions

TERMINATION: The State may terminate the Agreement when the Contractor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days, after receipt of such notice. If the Agreement is terminated for non-compliance, the Contractor will be responsible for any direct costs and/or damages incurred by the State for placement of a new contract. The State, upon termination, reserves the right to take any appropriate legal action it may deem necessary.

OPTIONS: If this is a term contract, upon mutual agreement by both parties, the Agreement may be extended under the same terms and conditions of this Agreement for one (1) year intervals or the time interval equal to the original contract period.

FIRM PRICES: Prices shall not fluctuate for the period of the Agreement, unless otherwise specified by the State in the bidding documents or other terms of the Agreement.

CHANGES/MODIFICATIONS: Changes of specifications or modification of this Agreement in any particular can be effected only upon written consent of the Administrator, Division of Purchasing, but not until any proposed change or modification has been submitted to him in writing, signed by the one proposing the said change.

CONFORMING GOODS AND/OR SERVICES: The goods and/or services shall minimally conform in all respects with the specifications as indicated in the State's bid solicitation documents. In event of nonconformity, and without limitation upon any other remedy, the State shall have no financial obligation in regard to the non-conforming goods and/or services.

OFFICIAL, AGENT AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE: It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Idaho be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.

ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE: Acceptance of this Agreement binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964 in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No other wise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving Federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et sequence, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. The Contractor must include this provision in every subcontract relating to purchases by the State to insure that subcontractors and vendors are bound by this provision.

TAXES: The State of Idaho is generally exempt from payment of Idaho State Sales and Use Tax under the authority of Idaho Code, Title 63, Chapter 36, Section 63-3622 as a Government Instrumentality for property which it purchased for its use. In addition, the State is generally exempt from payment of Federal Excise Tax under a permanent authority from the District Director of the Internal Revenue Service. Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State of Idaho, it shall be solely and absolutely responsible for the payment of those taxes. However, after execution of this Agreement and after a reasonable time to appeal any future Idaho political subdivision tax assessments, the State of Idaho will be responsible for any future personal property taxes for items that are subject to this Agreement.

SAVE HARMLESS: Contractor shall indemnify and hold harmless the State of Idaho from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney fees, caused by or which arise from the, negligent or wrongful acts or omissions of the Contractor, its employees, agents, or subcontractors under this Agreement which cause death or injury or damage to property; or arising out of a failure to comply with any state or federal statute, law, regulation or act. **IN NO EVENT WILL THE CONTRACTOR BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES.** Contractor shall have

no indemnification liability under this section for death, injury, or damage arising out of the negligence or misconduct of the State.

ORDER NUMBERS: Agreement order numbers or purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

CONTRACTOR RESPONSIBILITY: The Contractor shall be required to assume responsibility for production and delivery of all material and services offered in the proposal, whether or not the Contractor is the manufacturer or producer of them. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of items selected.

SUBCONTRACTING: Unless otherwise allowed by the State in the Request for Proposal, the Contractor shall not, without written approval from the Administrator, Division of Purchasing, enter into any subcontract relating to the performance of this Agreement or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of responsibility for the professional and technical accuracy and adequacy of the work. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Agreement by Contractor's subcontractor or its sub-subcontractor.

STATE OF IDAHO MINIMUM WAGE LAW: It will be the responsibility of the Contractor to fully comply with the State of Idaho code regarding the minimum wage law for residents hired to help on projects and jobs in Idaho.

COMMODITY STATUS: It is understood and agreed that any item offered or shipped shall be new and in first class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by the State in the bidding or specification documents. Demonstrators, previously rented, refurbished, or reconditioned items are not considered new except as specifically provided in this section. New means items which have not been used previously and are being actively marketed by the manufacturer or Contractor. The items may contain new or minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer's new product standards. The items must have the State of Idaho as their first customer and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). The new items offered must be provided with a full, unadulterated, and undiminished new item warranty against defects in workmanship and materials. Unless modified by other specifications in the bidding documents, the warranty is to include replacement, repair, and any labor for the period of time stated by the Contractor in the bid response or the period of time required by other specifications, whichever is longer.

SHIPPING AND F.O.B. POINTS: All orders will be shipped directly to the ordering departments at the location specified, on an F.O.B. Destination freight prepaid and allowed basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. F.O.B. Destination, unless otherwise specified in the Agreement or bid solicitation documents, shall mean delivered to the State Agency Receiving Dock or Store Door Delivery Point, unless a different location is specified by the State in the bid solicitation documents. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations. If installation is requested by the State or specified in the State's bidding documents, pricing shall include all charges associated with a complete installation at the location specified.

INVOICING: ALL INVOICES are to be sent directly to the ORDERING DEPARTMENT ONLY. Agreement number and/or purchase order numbers are to be shown on all invoices. In no case are invoices to be sent to the Division of Purchasing.

RISK OF LOSS: The Contractor agrees to bear all risk of loss, injury, and destruction of goods; and material ordered herein which occur prior to delivery; and such loss, injury or destruction shall not release the Contractor from any obligation hereunder.

ASSIGNMENTS: No contract or order or any interest therein shall be transferred by the contractor or vendor to whom such contract or order is given to any other party, without the approval in writing of the Administrator, Division of Purchasing. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the State. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the State.

PROHIBITED CONTRACTS: No member of the legislature or officer or employee of any branch of the state government shall directly himself, or by any other person execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the State of Idaho, if made by, through or on behalf of the department in which he is an officer or employee; or if made by, through or on behalf of any other department unless the same are made after competitive bids.

PAYMENT PROCESSING: Title 67, Chapter 57, Section 67-5735 of the Idaho Code reads as follows: "Within ten (10) days after the property acquired is delivered as called for by the bid specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be reimbursed according to the terms of the bid. Within ten (10) days of receipt of the document necessary to permit reimbursement of the contractor according to the terms of the contract, the State Controller shall cause a warrant to be issued in favor of the contractor and delivered."

GOVERNMENT REGULATIONS: Contractor guarantees that all items meet or exceed those requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection Agency, or other regulatory agencies.

HOT GOODS: The Contractor hereby certifies that all goods provided under this Agreement are produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and the regulation and orders of the United States Department of Labor issued under Section 14 thereof and other applicable provisions of the Fair Labor Standards Act.

YEAR 2000 WARRANTY - COMMERCIAL ITEMS: The Contractor warrants that each hardware, software, and firmware product (or item containing a hardware, software, and firmware component) delivered under this Agreement shall be able to accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by the Contractor, provided that all listed or unlisted products (e.g. hardware, software, firmware) are used in combination with such listed product and properly exchange date data with it. If the Agreement requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system. The duration of this warranty and the remedies available to the State for breach of this warranty shall be defined in, and subject to, the terms and limitations of the Contractor's standard commercial warranty or warranties contained in this

Agreement, provided that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to the State under this warranty shall include repair or replacement of any listed product whose non-compliance is discovered and made known to the Contractor in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this Agreement with respect to defects other than Year 2000 performance.

PATENTS AND COPYRIGHT INDEMNITY

a. Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States patent, copyright, trade secret, or trademark for items purchased under this Agreement. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the State of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and (iii) should the item(s) become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States patent, that the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the item(s), to replace or modify the item(s) so that it becomes non-infringing, or to grant the State a full refund for the purchase price of the item(s) and accept its return.

b. Contractor shall have no liability to the State under any provisions of this clause with respect to any claim of infringement which is based upon the combination or utilization of the item(s) with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications or the modification by the State of the item(s) or the use of the item(s) not in accordance with Contractor's previously established specifications.

CONFIDENTIAL INFORMATION: Pursuant to this Agreement, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other information that the State regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the State. Contractor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose Confidential Information or any advice given by it to the State to any third party except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then, only upon timely notice to the State. The State may require that Contractor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. Confidential Information shall be returned to the State upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. "Confidential Information" shall not include data or information that:

- a. is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;
- b. becomes generally available to the public other than as a result of disclosure by Contractor; or
- c. becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

USE OF THE STATE OF IDAHO NAME: Contractor agrees that it will not, prior to, in the course of performance of this Agreement (or any order), or thereafter use the State's name in any advertising or promotional media as a customer or client of Contractor without the prior written consent of the State.

APPROPRIATION BY LEGISLATURE REQUIRED: It is understood and agreed that the State is a government entity and this Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. The State reserves the right to terminate this Agreement (or any order placed under it) if, in its judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments. All future rights and liabilities of the parties hereto shall thereupon cease within ten (10) days after notice to the Contractor. It is understood and agreed that the State's payments herein provided for shall be paid from Idaho State Legislative appropriations and, in some instances, direct federal funding.

FORCE MAJEURE: Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the Contractor shall notify the Administrator, Division of Purchasing promptly in writing of any cause for delay and the Administrator, Division of Purchasing concurs that the delay was beyond the control and without the fault or negligence of the Contractor. If reasonably possible, the Contractor shall make every reasonable effort to complete performance as soon as possible.

GOVERNING LAW: This Agreement shall be construed in accordance with, and governed by the laws of the State of Idaho. Except to the extent the provisions of the Agreement are clearly inconsistent therewith, the Agreement shall also be governed by the applicable provisions of the Idaho Uniform Commercial Code (IUCC). To the extent this Agreement entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the IUCC, except where deeming such services as "goods" would result in a clearly unreasonable interpretation. Any action to enforce the provisions of this Agreement shall be brought in District Court in Ada County, Boise, Idaho.

NOTICE OF CONTRACT EFFECTIVENESS: It is understood that this document or any resulting contract or amendment is not effective until the appropriate State purchasing official has signed the document, contract, or amendment, the effective or award date has been completed on the document by the State purchasing official, and that date has arrived or passed. Neither the Contractor nor his organization will provide goods or render services to the State under the terms of this document, contract, or amendment until such document, contract, or amendment has been fully signed by the State purchasing official and the Contract has become effective. Furthermore, the State is in no way responsible for reimbursing the Contractor for goods provided or services rendered prior to the appropriate signature by the State purchasing official and the arrival of the effective date of the Contract.

ENTIRE AGREEMENT: This Agreement, with the State's Invitation to Bid or Request for Proposal, including any addendums (such document may be incorporated by reference as though herein set out in full) and the Contractor's bid response, to the extent it is not in conflict with the bid specifications (such document may be incorporated by reference as though herein set out in full), constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous bids or proposals, both oral and written,

negotiation, representations, commitments, and all other communications between the parties. Where terms and conditions specified in the State's bidding documents or Contractor's response differ from those specifically stated in this Agreement, the terms and conditions of this Agreement shall apply. It may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties. The terms of the Agreement shall prevail notwithstanding any variances with the terms and conditions of any other order submitted by the State of Idaho.

8.5 Division of Purchasing Rules Regarding Invitations To Bid

IDAPA 38.05.01

056. BIDS IN GENERAL. All bids are subject to the Invitation to Bid or Request for Proposal, the specifications and plans, the applicable contract terms and conditions and the rules set forth herein. In the event of conflict among any of the above, the following order shall govern:
01. Rules;
 02. Specifications and plans; and
 03. Applicable contract terms and conditions.
057. PUBLIC NOTICE. A listing or copy of all acquisitions being made through formal sealed bid by or through the Division shall be posted in the public area of the Division at its primary office location. Acquisitions issued pursuant to a specific delegation shall be posted or otherwise publicized by the purchasing office of that agency, or otherwise publicized prominently in the office of the using agency, or as otherwise directed by the Administrator. In addition, the Administrator may authorize electronic posting of acquisition notices.
058. --- 059. (RESERVED)
060. CONTENT OF THE INVITATION TO BID. The following shall be included in an Invitation to Bid.
01. Use. The Invitation to Bid is used to initiate a competitive sealed bid acquisition.
 02. Content. The Invitation to Bid, including any addendum, shall contain the following:
 - a. instructions and information to vendors concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, and any other special information;
 - b. the purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description;
 - c. any evaluation criteria to be used in determining property acceptability, to include, but not be limited to, requirements for submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:
 - I. inspection or testing of property prior to award for such characteristics as quality of workmanship;
 - ii. examination of such elements as appearance, finish, taste, or feel; or

iii. other examinations to determine whether it conforms with any other purchase description requirements. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation to Bid. Any bidder's offering which does not meet the acceptability requirements shall be rejected; and

d. If trade-in property is to be included, a description of the property and location where it may be inspected must be included. Any trade-in requests require the prior approval by the Administrator before inclusion in the bid solicitation documents.

e. the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

03. Incorporation by Reference. The Invitation to Bid may incorporate documents by reference provided that the Invitation to Bid specifies where such documents can be obtained.

04. Acknowledgment of Amendments/Addenda. The Invitation to Bid should require the acknowledgment by the bidder of the receipt of all amendments/addenda issued. The right is reserved to waive any informality.

061. BIDDING TIME. The bidding time shall be as determined by the buyer involved. All invitations to bid shall provide reasonable time to allow bidders an opportunity to prepare and submit their bid. The buyer shall have the discretion to lengthen or shorten bid times, should special circumstances or needs dictate a shorter or longer time frame. In no event shall the bid time be less than ten (10) days from the date of notice to the bid opening date, unless an emergency has been declared to exist by the Administrator. When extending or shortening the time allowed to submit a bid, the buyer is to issue an addendum notifying vendors of the revised opening/due date. If it is determined that regular mail will not reach vendors in time to respond, the buyer shall attempt to notify each prospective vendor by telephone or other available means of communication. All bids must be received by the date and time specified for bid opening. No deviations will be allowed. All late bids, other than clearly marked "no bids," will be returned to the bidder. Time of receipt will be determined by the official time stamp or receipt mechanism located at the Purchasing Activity.

062. BIDDER SUBMISSIONS. The Invitation to Bid shall provide an official or authorized form which shall include space in which the bid price shall be inserted and which the vendor shall sign and submit along with all other necessary submissions.

01. Telegraphed Bids. Telegraphed bids will not be accepted unless solicited under emergency procedures. Timely bids may be modified by telegraphic communications under the procedures established for bid modifications.

02. Telephone Bids. Telephone bids will not be accepted unless solicited under emergency purchase procedures. Telephone withdrawals of bids will not be accepted.

03. Facsimile Bids. Facsimile bids will not be accepted unless solicited under emergency procedures. A facsimile withdrawal of a bid may be accepted, provided such request is made in accordance with these rules.

04. Bid Samples and Descriptive Literature.

a. Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and assists the Purchasing Activity in considering whether the item meets requirements or criteria set forth in the Invitation to Bid.

b. Bid sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

c. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

d. Sample of items, when called for in the Invitation to Bid, must be furnished free of expense, and if not destroyed by testing, will upon request, be returned at the bidder's expense. Samples submitted by the successful bidder may be held for comparison with property furnished and will not necessarily be returned. Samples must be labeled or otherwise identified as called for by the Purchasing Activity.

e. Samples accepted by the Purchasing Activity will create an express or implied warranty that the property offered in future shipments or orders will meet the same quality and characteristics of the accepted sample.

05. Bid Security. Bid and performance bonds or other security may be required for purchase order contracts or other contracts as the Administrator deems advisable to protect the interests of the using agency. Any such requirements must be set forth in the solicitation. Bid or performance bonds should not be used as a substitute for a determination of bidder or offeror responsibility.

06. Specification Warranty. Unless the submitted bid is clearly identified as an alternate, bidders warrant the property and services bid to be at least equal to specifications on the Invitation to Bid and shall submit with their bid complete documentation sufficient to so establish. Bids without sufficient documentation submitted with the bid may be rejected. If a bidder misrepresents their bid as being an equal when it is an alternate, the bid may be rejected.

063. PUBLIC NOTICE. Notification of bids shall be made to the public, which notification may include electronic posting of bid notices or bidding opportunities.

01. Notice Distributed. Notice shall be sent to each registered vendor of the property to be acquired, except that if there are more than ten (10) registered vendors for the property to be acquired, the Administrator may, at his discretion, limit the notices sent to ten (10). Selection of the vendors to be given notice by the buyer should give priority to those registered vendors located closest to the delivery destination of the property to be acquired. Should there be more than ten (10) registered vendors with identical distances from the point of delivery, then the minimum number of vendors may be randomly picked from the applicable category(s) of the registered vendor list. For all proposed purchases exceeding \$200,000, all registered vendors for the property to be acquired shall either be sent pre-survey information or a copy of the solicitation. Nothing shall prevent all registered vendors from bidding on the property to be acquired.

02. Contents of Notice. The notice shall describe the property to be acquired in sufficient detail to apprise a vendor of the exact nature or the functionality of the required property. The notice shall give the time and place where bids will be opened. The notice, if it does not contain the specifications, shall state where and how specifications and required solicitation documents can be obtained. The notice may also contain other appropriate information.

064. REGISTERED VENDOR LISTS. Vendors must be registered with the Division in accordance with the applicable law and these rules. Vendor lists, categorized according to specific categories of purchased goods, services and property, shall be maintained and updated by the Division. Such lists are used by buyers to determine vendors from which to solicit bids. Due to cost considerations not all vendors are solicited for each bid invitation. In order to be considered for inclusion on a vendor list, vendors must apply to the Division.
065. (RESERVED)
066. PRE-BID CONFERENCES. Pre-bid conferences may be conducted to explain the solicitation requirements. They shall be announced to all prospective vendors known to have received an Invitation to Bid. The conference should be held long enough after the Invitation to Bid has been issued to allow vendors to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation to Bid unless a change is made by written amendment/addenda as provided in accordance with these rules and the Invitation to Bid and the notice of the pre-bid conference shall so provide. If a written summary of the conference is deemed advisable by the buyer, a copy shall be supplied to all those prospective vendors known to have received an Invitation to Bid and shall be available as a public record.
067. AMENDMENT OF INVITATION TO BID. An Invitation to Bid may be changed or amended by the buyer involved through issuance of an addendum, provided the change is issued in writing prior to the bid opening date and issued to all vendors receiving a copy of the original invitation. Any material information given or provided to a prospective vendor with regard to an Invitation to Bid, shall be furnished in writing by the buyer to all vendors receiving a copy of the original invitation. Oral interpretations of specifications or contract terms and conditions shall not be binding on the Division unless confirmed in writing by the buyer and acknowledged by the Division prior to the date of the bid opening.
01. Application. Amendments or addenda should be used to:
- a. make any changes in the Invitation to Bid such as changes in quantity, purchase descriptions, delivery schedules, and opening dates;
 - b. correct mistakes, defects, or ambiguities; or
 - c. furnish to other vendors information given to one vendor if such information will assist the other vendors in submitting bids or if the lack of such information would be equitable to other vendors.
02. Form. Amendments to the Invitation to Bid shall be identified as such and should require that the vendor acknowledge receipt of all amendments or addenda issued.
03. Distribution. Amendments/addenda shall be sent to all prospective vendors known to the buyer to have received an Invitation to Bid.
04. Timeliness. Amendments/addenda shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit such preparation, the bid opening time may be rescheduled upon notice to the prospective bidders.

068. PERFORMANCE GUARANTEES. When required in the Invitation to Bid, the successful bidder shall post a performance and/or payment and material guarantee unilaterally payable to the state of Idaho after notice of award. The amount of the performance guarantee shall be identified in the Invitation to Bid in dollars and/or a percentage of contract worth sufficient to redress damages to the state in the event of breach by the contractor(s). The required performance guarantee shall be in the form of a surety bond with a surety company authorized to transact business in Idaho or an approved government obligation. Surety bonds must be on a form approved by the Division. Personal or company checks are not acceptable. The performance guarantee shall be held by the Division or deposited to the Division account until contract terms have been fully executed to satisfaction. Interest will not be paid on funds deposited directly with the Division. Failure to submit a performance and/or payment and material bond as required in the Invitation for Bids shall be grounds for rejection, cancellation, rescission or contract termination.

069. --- 085. (RESERVED)

086. FORM OF BID. To receive consideration, bids shall be made on the form provided by the Purchasing Activity, be properly headed and signed, properly marked on the outside of the envelope, received by the date and time specified, and be accompanied by a signed and properly completed bid form provided by the Purchasing Activity. Bids must be filled out in ink or typewritten and properly signed by an authorized representative of the bidder. Photocopied or facsimile signatures will not be acceptable. All changes and/or erasures shall be initialed in ink. Unsigned bids will be rejected on opening.

087. ACCEPTANCE OF ALTERNATE BID. The buyer shall be under no obligation whatever to accept alternate bids, but shall have the discretion to accept a bid if it substantially conforms to the bid specifications.

088. BID SECURITY. Bids must be delivered to the designated location at the Purchasing Activity and placed in a secure bid depository on or before the bid opening time stipulated on the Invitation to Bid.

089. --- 095. (RESERVED)

096. PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS. Bids may be modified or withdrawn as set forth herein.

01. Procedure. Bids may be modified or withdrawn by written communication over the signature of the bidder at any time prior to the closing of the bid.

a. Requests for withdrawal in person shall require presentation of satisfactory evidence establishing the individual's authority or representation to on behalf of the bidder. A request for telegraphic or facsimile withdrawal of a bid must be received prior to the closing date and time of the bid. The Purchasing Activity does not assume any responsibility for failure of facsimile transmission or equipment.

b. A modification may be submitted by letter or telegraphic communication, provided that the bid and the letter or telegram are received prior to the closing date and time of the bid. Facsimile bid modifications will not be allowed or considered unless solicited under emergency procedures. The modification (if telegraphic) must be confirmed in writing, over an original signature of the bidder. The written confirmation must be mailed and postmarked no later than the closing date of the bid. The letter or telegram should be so worded as not to reveal the amount of the original bid. If the written confirmation

of a modification is not received within two (2) working days from the bid closing date, no consideration will be given to the telegraphic modification. Any telegraphic communication relative to a bid must state the bid closing date, time and the bid number. On written communications, the bid closing date, time and the bid number, should appear on the outside of the envelope to prevent premature disclosure of the information.

02. Disposition of Bid Security. Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

03. Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate purchasing file.

097. LATE BIDS, LATE WITHDRAWALS, AND LATE MODIFICATIONS. The following procedures are established relative to late bids, late withdrawals and late modifications to bids.

01. Definition. Any bid, withdrawal, or modification received at the address designated in the Invitation to Bid after the time and date set for opening of bids at the place designated for opening is late.

02. Treatment. No late bid, late modification, or late withdrawal will be considered.

03. Records. Documentation relating to any late bid, late modification, or late withdrawal shall be kept and maintained by the Division.

098. RECEIPT, OPENING, AND RECORDING OF BIDS. The following establishes a process for the receipt, opening and recording of bids.

01. Receipt. Upon receipt, all bids and modifications properly marked and identified will be time stamped, but not opened. they shall be stored in a secure place until bid opening time.

02. Opening and Recording. Bids and modifications shall be opened publicly at the time and place designated in the Invitation to Bid. The names of the bidders, the bid price (unless otherwise stated in the solicitation), and such other information as is deemed appropriate by the buyer, shall be read aloud or otherwise be made available. The opened bids shall be available for public inspection except to the extent the bidder designates which portion of the bid contains trade secrets or other proprietary data. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the remaining portion of the bid. Make, model, or catalogue numbers of the items offered, deliveries, prices, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary. The buyer shall decide when the time set for bid opening has arrived and shall so declare to those present. The bid form may not be completed, signed, amended or clarified after official opening time. Bids must remain under the control of the buyer or authorized staff.

03. Public Inspection of bids. The Idaho Public Records Act will control the extent of public inspection of bids received by the Purchasing Activity.

099. MISTAKES IN BIDS. The following procedures are established relative to claims of a bid mistake.

01. Mistakes in Bids. If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is

permissible, but at the discretion of the Administrator and to the extent it is not contrary to the interest of the Division or the fair treatment of other bidders.

02. Mistakes Discovered Before Opening. Mistakes in bids detected prior to bid opening may be corrected by the bidder by submitting a timely bid modification or withdrawing the original bid and submitting a corrected bid to the Purchasing Activity before the bid opening.

03. Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three situations described in paragraphs a., b. and c. below in which mistakes in bids are discovered after opening but before award.

a. Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect of the mistake on price, quantity, quality, delivery, or contractual conditions is not significant. The buyer may waive such informalities. Examples include the failure of a bidder to:

I. return the number of signed bids required by the Invitation to Bid;

ii. acknowledge the receipt of an amendment or addendum to the Invitation to Bid, but only if:

(a) it is clear from the bid that the bidder received the amendment/addendum and intended to be bound by its terms; or

(b) the amendment/addendum involved had a negligible effect on price, quantity, quality, or delivery.

b. Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices (unit prices will always govern in event of conflict with extension), transposition errors, and arithmetical errors.

c. Mistakes Where Intended Bid is not Evident. A bidder may be permitted to withdraw a low bid if:

I. a mistake is clearly evident on the face of the bid document but the intended bid is not similarly evident; or

ii. the bidder submits timely proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

04. Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

05. Written Approval or Denial Required. In the event of a bid mistake discovered after the opening date, the Administrator shall approve or deny, in writing, a bidder's request to correct or withdraw a bid. Such approval or denial may be so indicated on the bidder's written request for correction or withdrawal.

9. REQUEST FOR PROPOSALS

Formal Invitation To Bids cannot always address the needs of the state, especially when generic specifications are not available or difficult or impossible to draft and conventional evaluation for award cannot be made on absolute criteria. For example, high technology products and complex services are not amenable to conventional bidding. The *Request For Proposal* is a solicitation used for situations like these.

9.1 Methods

The Request For Proposal is a competitive formal sealed process that is legally binding and evaluated according to predetermined weighted standards. The RFP outlines the purpose, scope, description, minimum requirements or expectations, qualifications or capability of the proposers, evaluation criteria, and other requirements. In the RFP response, the vendor offers a solution for the particular need described in the RFP. The RFP allows for discussions with vendors to explain or clarify proposals and for a "Best and Final Offer".

9.2 Property or Services Between \$25,000 and \$200,000

Purchases expecting to cost over \$25,000 and under \$200,000 require a minimum of ten (10) competitive proposal solicitations from registered vendors.

9.3 Property or Services Exceeding \$200,000

Purchases expecting to cost over \$200,000 require that all registered vendors in the commodity receive a RFP solicitation or are offered an opportunity to submit a RFP in a pre-bid survey.

9.4 Some Common Uses of the Request For Proposal

Information Technology: software, hardware, or services relating to such items as imaging, video conferencing, leasing, data management systems, network services, and maintenance and repair.

Professional and Consultant Services: such as artists, accountants, lawyers, nurses, doctors, educators, engineers, architects, technical consultants, auditors, and researchers.

Services: where skills, expertise, and capability must be evaluated such as janitorial, laboratory testing, financial management, artwork and graphic design, travel services and management, and warehousing and distribution.

Products and Delivery Services: such as purchase and delivery of office supplies and laboratory supplies.

9.5 Developing a Request for Proposal

This information on RFPs is also available on the Idaho Purchasing Internet Homepage as a separate document entitled: *Guidelines for Developing a Request For Proposal*. You are encouraged to make all in your agency who write RFPs aware of this publication.

No two Request for Proposals are alike and preparing one can be a difficult task. However, a well written RFP can alleviate many problems. Agencies are invited and encouraged to involve the Division of Purchasing early in the development of the RFP. The Division of Purchasing can provide assistance and valuable advice regarding the development of RFPs.

9.5.1 Appropriateness

Is the Request For Proposal format the best method to satisfy the agency requirements? Generally the RFP is used when the relative skills, expertise, or technical capability of the offerors will have to be evaluated; when cost is secondary to the characteristics of the property or service sought, when the conditions of the service, property or delivery conditions are unable to be sufficiently described in the Invitation to Bid, and when the acquisition is for highly complex or technical property or services and evaluation of the offeror's approach, management capabilities, innovation, or other technical factors are secondary to cost.

The agency should examine factors such as: what is the problem or requirement that needs addressed, what solutions are expected, how much money is available for this project, how will the solution affect the agency operations, and how will the agency monitor or ensure contract compliance.

The Request For Proposal is the preferred method for soliciting Professional and Consultant Services.

9.5.2 Preparation and Response Time

RFPs take a significant amount of time to prepare and review before they are issued. On the average, an RFP will take 90 days from receipt of the RFP at the Division of Purchasing to contract implementation or product delivery. In your planning, allow adequate time for possible rewriting of specifications, questions from offerors, pre-proposal conferences, for offerors to prepare their proposals, evaluations, and contract award. If an appeal is received, the process can become delayed even longer.

9.5.3 Evaluation Factors

It is important to identify and state in the RFP all evaluation factors and their relative importance, including price. These factors will be the only way to properly evaluate the proposals and assure that the awarded proposal meets all the requirements of the state. Factors not specified in the RFP cannot be used for evaluating the proposals.

Evaluation factors should be *developed early or concurrently with the specifications* in the formulation of the RFP. Make a detailed list of the most important aspects of the service or goods required, including cost, and develop the evaluation factors from it. Typically, proposals are divided in three categories for evaluation; technical capability and solution approach, cost proposal, and managerial and staff capability.

9.5.3.1 Technical Capability & Solution Approach

The proposal is evaluated as to how well it addresses the solution based on the requirements of the RFP and whether the proposer has the technical ability to provide an acceptable solution. The proposal must show how the offeror plans to approach the task

and the steps to be taken to complete the task. The offeror must also show that they understand both the magnitude and importance of the individual tasks to make a convincing proposal.

9.5.3.2 Cost Proposal

This should contain all costs to the agency and be presented in the format described by the RFP. For example: the RFP may require detailed costs by tasks and to be acceptable the offeror must present it in that format. Generally, cost proposals are submitted in a separate sealed envelope to be opened only after the evaluation of the technical section of the proposal is complete.

9.5.3.3 Managerial and Staff Capability

This category of the evaluation deals with evaluating information such as the offeror's organization, experience in similar projects, resumes of staff to assigned to the project, financial stability, and industry references. To be evaluated, these areas must have been identified in the RFP as evaluation criteria.

9.5.4 Evaluation Rating Form - Rating System

An evaluation rating form should be developed, before the RFP is released, that allows for evaluation criteria to be individually weighed and scored.

A numerical rating system may be used but is not required. In a typical rating system, the items identified as the most important to the success of the project are given the most points. Cost is usually identified as a percentage of the total available points and cost proposals from all offerors are "normalized" meaning that the lowest cost offeror receives 100% of the points available and the other higher cost proposals receive a percentage of the available points based on their submitted cost.

9.5.5 Choosing Your Evaluation Team

The evaluation committee should be made up of individuals with varied talents and expertise to assure the impartiality of the committee. The committee should have at least one evaluator not associated with the requesting agency.

9.5.6 How to Evaluate the Proposals

- The evaluators score the Technical and Managerial and Staff Capability sections of the proposals separately and individually. Evaluators are instructed to not discuss any part of the proposals outside of the committee.
- The evaluation committee may meet when all individual scoring is completed to discuss the evaluation. If it is apparent that one or more evaluator score differs greatly from the majority, the committee should discuss the situation to be sure the criteria was clear to all. If an evaluator feels at this point that he did not understand the criteria or did not understand the criteria or part of the proposal, he may at his discretion revise his evaluation, date and initial the change. All evaluation forms are turned in to the chairperson.

- Results are tabulated and averaged by the chairperson and relative weighting applied. A composite score is obtained for each proposal.
- Offerors are ranked technically in descending order.
- The cost proposals are reviewed and points assigned to each proposal.
- Technical, Managerial and Staff Capability, and Cost are combined to determine total points for each proposal.
- Evaluation Score Sheets become part of the RFP file and are considered public information.

9.5.7 Oral Presentations

When oral presentations are to be considered as part of the evaluation, specific criteria and weighting of the presentation must be developed prior to the issuing of the RFP and be listed as part of the evaluation criteria. Points awarded for oral presentations are added to the proposal points in the same manner as listed above.

9.5.8 References

When references are to be contacted as part of the evaluation the following information is required:

- List of questions for references
- Instructions to be given to the reference including a numerical scale to be used in rating the offeror.
- A numerical value to be assigned by the evaluator.

References will be contacted only once. This may be by a appointed individual who is not a member of the evaluation committee or by a conference call with all members of the evaluation committee present. Evaluation score sheets are assigned points and added to the proposal points in the same manner listed above.

9.5.9 Pre-Proposal Conference

Consider whether a pre-proposal conference for potential offerors is needed to further explain, clarify, or identify areas of concern in the RFP. These should always be held prior to submission of initial proposals. If using a pre-proposal conference, follow these guidelines:

9.5.9.1 Scheduling a Conference

The pre-proposal conference should be scheduled at a time and date identified on the RFP cover letter. Indicate how many representatives from each company will be allowed to attend (usually a maximum of two). Keep in mind that some offerors may

have to travel a distance to attend, so sufficient time should be allowed for offerors to receive the RFP, formulate questions, and make necessary travel plans.

9.5.9.2 Answering Questions

Any questions regarding the RFP should be submitted in writing prior to the pre-proposal conference and be answered by the agency at the meeting. Additional questions may be entertained, however, responses may be deferred and provided at a later time. Any oral answer given by the agency is to be considered tentative by potential offerors. Official answers to all questions should be published in writing and supplied to all attendees.

9.5.10 Proposal Discussion with Offerors

After the proposals have been scored they are classified as acceptable, potentially acceptable (that is reasonably susceptible of being made acceptable), or unacceptable. Discussions with offerors are only conducted with proposals determined as being acceptable or potentially acceptable.

9.5.10.1 Purpose of Discussion

Discussions are held to facilitate and encourage an adequate number of potential offerors to offer their best proposals, by amending their original offers, if needed.

9.5.10.2 Conduct of Discussions

All offerors must be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Procedures and schedules for conducting discussions should be established. If during discussions there is a need for clarification or change of the Request for Proposals, it shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

9.5.10.3 Best and Final Offer

A time and date for submission of best and final offers must be set. Best and final offers shall be submitted only once unless there is a written determination before each subsequent round of best and final offers demonstrating another round is in the agency's interest, and additional discussions will be conducted or the agency's requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

9.5.11 Other Considerations

9.5.11.1 Public Notice

RFP are distributed in the same manner as Invitation To Bids, with the same required number of registered vendors receiving solicitations according to the estimated dollar amount of the RFP.

9.5.11.2 Amendment, Modification, or Withdrawal

RFPs may be amended, modified, or withdrawn prior to the established due date and time in the same manner as Invitation To Bids.

9.5.11.3 Late Proposals: Modifications, or Withdrawals

Any proposal, withdrawal, or modification received after the established due date and time at the place designated for receipt of proposals is late. Such late documents may only be considered in documenting a mistake and used to withdraw a proposal due to the mistake.

9.5.11.4 Receipt and Record of Proposal

Proposals shall be opened publicly, identifying only the names of the offerors unless otherwise stated in the Request for Proposals. Proposals and any amendments or modifications shall be date and time stamped upon receipt and held in a secure place until the established due date. After the date and time established for receipt of proposals, a record of all proposals received shall be prepared to include the name of each offeror, the number of amendments or modifications received, if any, and a description sufficient to identify the supply, service, or property offered. The record of proposals shall be open to public inspection in accordance with the provisions of the Idaho Public Records Act. Proposals and modifications shall be shown only to purchasing agency personnel having a legitimate interest in them.

9.5.12 Mistakes in Proposals

Mistakes discovered before the established due date and time may be corrected by the offeror by withdrawal or modification of the proposal.

Mistakes discovered after receipt but before award may be corrected or the proposal withdrawn by the offeror in the following circumstances:

Minor Informalities: Mistakes may be corrected and the correct offer considered only if the mistake and the correct offer are clearly evident on the face of the proposal in which event the proposal may not be withdrawn or the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the correct offer and such correction would not be contrary to the fair and equal treatment of other offerors.

Withdrawal of Proposals: The offeror may be permitted to withdraw the proposal if the mistake is clearly evident on the face of the proposal and the correct offer is not or the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the correct offer or if the correct offer is also demonstrated, to allow correction on the basis of such proof would be contrary to the fair and equal treatment of other offerors.

Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

9.5.13 Publicizing Awards

After a contract is entered into, notice of award shall be available in the Purchasing Activity's office. Any appeals concerning the award shall be made according to Division of Purchasing rules.

9.6 Basic Contents of the RFP

While no two RFPs are alike, they all share many common points. The following items are the basic contents of an RFP and are designed to be used as a model for state agencies to follow. There may be a need to add, edit, or delete sections to meet the requirements of the specific RFP under development.

9.6.1 Cover Letter

The cover letter is supplied by the Division of Purchasing. It contains instructions to vendors such as the RFP opening date and time, procedures and requirements for vendor questions, number of RFP copies required, state of domicile information, information regarding trade secrets, vendor registration requirement, and F.O.B. requirements.

9.6.2 Terms and Conditions

Terms and Conditions are also supplied by the Division of Purchasing. They include General Terms and Conditions relative to all RFPs, Special Terms and Conditions that are specific to the individual RFP being issued, and if necessary, information regarding Proposal Discussions (Best and Final Offers).

9.6.3 General Information

9.6.3.1 Purpose or Intent

A statement of intent or purpose relating to the general type of service or goods required, the location(s), and any requirement for specialized personnel, equipment or tools. This information should be sufficient enough for interested offerors to determine whether or not they are able or wish to offer a proposal. The purpose must be a clear and complete overview of everything the agency wants, needs, and requires.

9.6.3.2 Background

Description of the function of the agency that requires the service or goods. Explain why the service or goods are needed and the objectives of the agency. If applicable, describe the current method or system in use and its deficiencies.

9.6.3.3 Scope of Work

A general summary of the work to be performed by the contractor, organized to reflect the order in which the work will be performed.

9.6.3.4 Definitions

List any terms or definitions which are specific to the RFP that may not be clear to all offerors. Special attention should be given to information technology terms that may not be clear to all offerors.

9.6.3.5 Method of Payment

The agency should address how payment will be made to the contractor, whether monthly, quarterly, upon specific deliverables, or at completion of project. If applicable, the agency should outline any information required on the invoice or statement, to whom and where it is to be submitted, at what date and time it is due, and any other relative information.

9.6.3.6 Contract Term

Specify exactly the term of the contract, when it begins and when it expires, along with any provisions for renewal.

9.6.3.7 Presentations or Demonstrations

If required, explain in detail the format, time, and any other relevant information that offerors would need to know to prepare a presentation or demonstration.

9.6.3.8 Pre-Proposal Conference

Consider whether a pre-proposal conference for potential offerors is needed to further explain, clarify, or identify areas of concern in the RFP. These should always be held prior to submission of initial proposals. Clearly identify the time and place for the pre-proposal conference in the RFP cover letter and indicate how many representatives each potential offeror may send.

Inform potential offerors that specific questions concerning the RFP should be submitted in writing prior to the pre-proposal conference. Additional questions may be entertained at the conference, however, responses may be deferred and answered at a later date. Oral responses by the State are to be considered tentative. Written copies of all questions and official State responses will be supplied to potential offerors. Only written responses will be considered official.

9.6.4 Technical Specifications

9.6.4.1 Specifications for Goods

For goods, specifications should list the minimum characteristics and objectives required by the user. They should include issues such as environmental concerns, product testing requirements, or other specific concerns relative to the RFP.

9.6.4.2 Scope of Projects

For long term projects, this is a comprehensive definition of the exact area(s) to be addressed during the project. Define the working environment. This is a project overview which closely relates to the objectives, except it will be used to address the areas (geographic, organizational, etc.), in which the project activity takes place. Define both the vendor's and the state's responsibilities.

9.6.4.3 Scope or Description of Work

For services, this is a detailed, step-by-step description of the work to be performed by the contractor, organized to reflect the order in which the work is to be performed. Identify the major task headings and subtasks for performing the work. Describe each task as carefully and with as much detail as possible. Each task should be described in a separate, numbered paragraph, and there should be a deliverable product for each task.

9.6.4.4 Project Management

Outline how the agency and the contractor will monitor timetables and deliverables specified in the RFP. In a complicated, long-term project, specify who will be responsible for meeting goals, keeping the project within the contracted cost, and keeping the project within the scope of work outlined in the RFP.

9.6.4.5 Deliverable Summary and Schedule

If applicable, establish a general schedule of events or estimated timetable that lists the deliverables in sequential order, beginning with issuance of the RFP to the final expected date of completion of the contract.

9.6.4.6 Support, Training and Maintenance

If required, identify in detail any support, training, and maintenance required.

9.6.5 Vendor Requirements

9.6.5.1 Vendor Organization

The offeror should outline their organization and describe how this qualifies the organization to be responsive to the requirements of the RFP. Examples might include

their company size, distribution system, customer service structure, number of employees, technical licenses or certificates relative to the product or service being offered.

9.6.5.2 Vendor Qualifications and Experience

The offeror should describe their organizational and staff experience providing similar services or goods described in the RFP in sufficient detail to demonstrate their ability to perform the functions outlined in the RFP. In long-term projects, ask for their experience, capability, and commitment to perform project management functions.

9.6.5.3 Vendor References

The offeror should provide a minimum of three (3) trade references including names of persons who may be contacted, position of person, addresses, and phone numbers where similar products or services similar in scope to the requirements of this RFP have been provided.

Industry references may be required and used as an evaluation tool if identified as such in the RFP. A minimum of three references where the offeror has provided similar products or services should be used.

9.6.5.4 Financials

If required, the offeror may be required to provide with the RFP response proof of financial stability in the form of financial statements, credit ratings, a line of credit, or other financial arrangements sufficient to enable the offeror to be capable of meeting the requirements of the RFP.

A disclosure of financial resources may also be required to assure that the offeror has sufficient resources and stability to complete the RFP project.

9.6.5.5 Resumes

Resumes may also be used as an evaluation tool. The offeror should provide resumes for each staff member responsible for design, implementation, project management, or other positions relative to the requirements of the RFP. Resumes may include education, experience, license, and/or certifications of each individual.

9.6.6 Proposal Response Format

9.6.6.1 Format or Outline to be used by Offeror

This is specific directions to the offeror on preparation of the proposal. Clearly define the type and nature of the information required in the proposal. The offeror must be made aware that their proposal will not be considered if required information is not provided.

A few suggested formats are:

- The proposal shall be submitted under the same cover at the same time, in two (2) distinct sections: a *Business or Technical Proposal* and a *Cost Proposal*.
- Proposals are to be prepared on standard 8-1/2" x 11" paper. Foldouts containing charts, spread sheets, and oversize exhibits are permissible. The pages should be placed in a binder with tabs separating the sections of the proposal. Manuals and other reference documentation may be bound separately. All responses, as well as any reference materials presented must be written in English.
- Proposals must respond to the RFP requirements by restating the number and text of the requirement in sequence and writing the response immediately after the requirement statement.
- Figures and tables must be numbered and referenced in the text by that number. They should be placed as close to possible to the referencing text. Pages must be numbered consecutively within each section of the proposal showing proposal section and page number.
- Proposals shall be based only on the material contained in this RFP. The RFP includes official responses to pre-proposal conference questions, addenda, and any other material published by the State pursuant to the RFP. The offeror is to disregard any previous draft materials and any oral representations it may have received. All responses to the requirements in Sections (list appropriate section) if this RFP must clearly state whether the proposal will satisfy the referenced requirements, and the manner in which the requirement will be satisfied.

9.6.7 Cost Proposal

This should contain all costs to the agency and be presented in the format described by the RFP. For example: the RFP may require detailed costs by tasks and to be acceptable the offeror must present it in that format. Generally, cost proposals are submitted in a *separate sealed envelope* marked *Confidential Cost Proposal* to be opened only after the evaluation of the technical section of the proposal is complete.

9.6.8 Method of Evaluation

The RFP must state in general terms all of the evaluation factors and their relative importance, including price. This is best accomplished by developing detailed evaluation criteria concurrently with the scope and specifications of the RFP. An Evaluation Rating Form should be developed and submitted with the RFP to the Division of Purchasing, before the RFP is released, that allows for evaluation criteria to be individually weighed and scored.

9.6.9 Attachments

This section is for any additional information that relates to the RFP and is necessary to further clarify contents of the RFP. Any charts, diagrams, or graphs referenced in the RFP would be placed here. Information technology diagrams, such as LAN or WAN diagrams, would appear here.

9.7 Standard Information Required on Request for Proposals

The following standard information is included as a part of all Invitations to Bid. It consists of bid award information, general information, conditions and instructions, and standard terms and conditions. Additional or special terms and conditions are added as needed.

9.7.1 Bid/Proposal Award Information Policy

NOTE: New information for completion and submission of bids or proposals (bid solicitations) is detailed in the following paragraphs. It is the bidder's responsibility to timely submit the bid in a properly marked envelope, prior to the scheduled bid opening, for receipt in sufficient time to allow the bid to be time and date stamped at the office of the Division of Purchasing.

We urge vendors to attend the public bid openings and record the bid information at that time. At the public bid opening for Requests for Proposals (RFP), only the names of bidders will be announced and no other information will be available until award of the RFP. It is normally not possible for the staff to immediately analyze bids after the bid opening. THEREFORE, the following policy and procedure has been adopted as being the best method for handling bid result inquiries. This procedure will yield the requested information in the most expeditious manner possible for all parties concerned.

POLICY: PERSONS REQUESTING BID TABULATION INFORMATION ARE TO EITHER WRITE (please include stamped, self-addressed envelope), FAX, PHONE, or VISIT THE DIVISION OF PURCHASING OFFICE AND REQUEST THE BID

TABULATION INFORMATION FROM THE RECEPTIONIST. NO BID TABULATION OR AWARD INFORMATION WILL BE GIVEN OVER THE PHONE.

Please give the BID NUMBER, BID TITLE, AND BID OPENING DATE information to the RECEPTIONIST. THIS INFORMATION CAN BE FOUND AT THE TOP OF THE BID SOLICITATION PAGE. This is the only way we can trace your request and prepare a response.

It takes time to tabulate and process bids. Please observe the following times when requesting bid tabulation information.

Bids over \$25,000, please wait at least 5 working days after the bid opening to request bid tabulation information.

Term Contract Bids, please wait at least 10 working days after the bid opening to request bid tabulation information.

Request for Proposals, please wait at least 20 working days after the bid opening to request bid tabulation information.

PLEASE, DO NOT REQUEST ANY BID AWARD INFORMATION ON THE TELEPHONE. NO TELEPHONE INFORMATION WILL BE GIVEN

BID REQUIREMENTS: The following requirements are for preparation, submission and consideration of bids:

- a. Registered Vendors: To be eligible to submit a valid bid, the vendor must be a Registered Vendor PRIOR to the scheduled bid opening date and time. If you are submitting the Vendor Registration-Bidders Mailing List Application and the required \$10 biennial registration fee, DO NOT INCLUDE these items in your bid envelope or package! The Vendor Registration application MUST BE received PRIOR to the bid opening date and time.
- b. Bid Completion: The Invitation To Bid or Request for Proposal signature page must contain an ORIGINAL HANDWRITTEN signature executed in INK and be returned with the relevant bid solicitation documents. Bids must be completed either in ink or typewritten. Bid forms or figures written in pencil are not acceptable. Mistakes should not be erased but may be crossed out and corrections inserted next to the errors and initialed IN INK by the person signing the bid. THIS INCLUDES BUT IS NOT LIMITED TO WHITEOUT CORRECTION FLUID AND TYPEWRITER CORRECTION TAPE.
- c. Bid Submittal: To assure your bid is opened at the proper time, the lower left corner of your SEALED bid envelope must indicate the item being bid, bid opening date and time, and the bid number. This information is found on the Bid Solicitation form. DO NOT FAX YOUR BID.
- d. Hand-Delivered Bids: Hand-delivered bids must be received at the Division of Purchasing reception desk and time and date stamped prior to the bid opening date and time.
- e. Alteration of Bid Prohibited: Bids may not be completed, amended or clarified on the face of the bid after the official bid opening time.

9.7.2 General Information for Bidders and Proposers

- 1. AUTHORITY TO PURCHASE: The Administrator for the Division of Purchasing, Department of Administration, or the Administrator's delegates are the only statutory agents authorized to execute contracts, purchase orders, leases, etc., for the purchase of supplies, materials, equipment, etc., except for those agencies, amounts, or commodities specifically exempt from purchase by statute.
- 2. BID AWARDS: Contracts may only be awarded to the "Lowest Responsible Bidder." The Lowest Responsible Bidder is defined by Idaho Code as "The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price."
- 3. SPECIFICATIONS: Specifications are written so as to describe the property the State wants to purchase or procure. If you are unsure of what the State wants, please present written questions to the appropriate purchasing official. Idaho Code, Section 67-5726 (3) reads: "No officer or employee shall conspire with a vendor or its agent, and no vendor or its agent shall conspire with an officer or employee, to influence or attempt to influence the award of a contract, or to deprive or attempt to deprive a registered vendor of an acquisition award." Idaho Code, Section 67-5730 (2) reads: "Vendors may be disqualified for any of the following reasons: (b) Attempts by whatever means to cause acquisition specifications to be drawn so as to favor a specific vendor." The state is prohibited from accepting property which does not meet the minimum bid specifications pursuant to Idaho Code Section 67-5726(4) and Section 67-5736.
- 4. LAWS: The laws under which the State purchases goods and services are found in the Idaho Code, Title 67, Chapter 57, Section 67-5714 through Section 67-5744. Attention is directed

to the fact that it is the vendor's responsibility to conform to ALL applicable Federal, State and local statutes or other applicable legal requirements.

5. **PREFERENCE FOR IDAHO SUPPLIERS FOR PURCHASES** (Idaho Code Section 67-2349): The law requires providing a reciprocal preference for Idaho domiciled bidders on purchases of materials, supplies, equipment, or services. The law and any applicable percentage preference are ONLY applicable to bidders domiciled in a state granting THEIR in-state bidders a preference. It is not applicable to domiciled bidders in states without a preference law or a reciprocal preference law. Vendors MUST provide information on the state of domicile of their company.

6. **COMPETITION**: Unless otherwise noted in the bidding documents, all purchases made pursuant to this contract are for the internal use of government only and no purchase under this contract will be resold to the general public at retail. Upon request the Division of Purchasing will issue a certification that all purchases made under this contract are intended for the internal use of government and will not be resold to the general public at retail.

7. **ADMINISTRATIVE APPEALS**: The laws applicable to administrative appeals are set forth at Section 67-5733, Idaho Code. In summary, they are:

a. **Specification Appeal**: Beginning with the day a registered vendor receives the bid solicitation document and ending ten (10) working days later, the vendor may challenge the specifications. The vendor is to notify, in writing, the Administrator of the Division of Purchasing of his intention to challenge the specification and state the exact nature of the challenge describing the location of the challenged portion or clause in the specification document and explaining why the provision should be struck, added or altered, and contain suggested corrections. Upon receipt of the challenge, the Administrator for the Division of Purchasing may either deny the challenge or request the Director of the Department of Administration to appoint a determinations officer. If a determinations officer is appointed, the determinations officer shall send a copy of the challenge to all vendors invited to bid asking for the vendors' response within five (5) days agreeing or disagreeing with the challenge. The determinations officer may require that the specifications be rewritten, rewrite the specifications himself and/or reject all or any part of the challenge.

b. **Bid Rejection Appeal**: Within five (5) working days following receipt of notice of rejection, a bidder may appeal the decision to the Director of the Department of Administration. This appeal is only available to a vendor whose bid is found non-responsive (i.e., a bid which does not comply with the bid invitation and specifications). It does not apply to a vendor whose bid is considered but who is determined not to be the lowest responsible bidder. The Director may either deny the appeal or appoint a determinations officer to review the record and submit a recommended order to the Director. Upon receipt of the determination officer's written recommendation, the Director may sustain, modify or reverse the non-responsive bid decision.

c. **Bid Award Appeal**: A vendor whose bid is considered may, within five (5) working days following receipt of notice that he is not the lowest responsible bidder, apply to the Director of the Department of Administration for appointment of a determinations officer. The appeal must set forth in specific terms the reason why the Administrator's lowest responsible bidder decision is erroneous. Upon receipt of the appeal, the Director shall, within three (3) working days, either (1) deny the appeal; (2) appoint a determinations officer to review the record and provide written recommendations; or (3) appoint a determinations officer with authority to conduct a contested case hearing within the context of the Idaho Administrative Procedures Act. Upon receipt of the determinations officer's written recommended order, the Director shall either sustain, modify or reverse the Division of Purchasing decision.

9.7.3 Conditions and Instructions to Bidders and Proposers

1. REGISTERED VENDORS: Title 67, Chapter 57, Section 67-5730 of the Idaho Code reads in part as follows: "No vendor shall be allowed to submit a bid unless such vendor is qualified and has registered PRIOR to the time of the bid opening A ten dollar (\$10) biennial registration fee shall accompany the request." Vendor Registration information and application forms (if the vendor is not already registered) may be found on the Division of Purchasing Internet web site at <http://www2.state.id.us/adm/purchasing/default.htm>.
2. INCOMPLETE BID FORMS: Incomplete and/or unsigned bid documents will be cause for non-acceptance and a finding of non-responsiveness. PHOTOCOPIED SIGNATURES or FACSIMILE SIGNATURES submitted by the bidder are NOT ACCEPTABLE.
3. DISCOUNTS: Discounts, when applicable, shall be shown in a single percentage figure e.g., 57-1/4% instead of 50, 10, and 5 percent. Be sure to show the net price to the state if a discount is given, (example: \$100.00 less 20% educational discount, Net price to the State is \$80.00). DISCOUNTS FOR PROMPT PAYMENT WILL BE ACCEPTED BUT CANNOT BE USED TO DETERMINE THE LOWEST BID.
4. UNIT PRICES GOVERN: Unit prices shall govern, but please extend the amount column, to avoid mistakes.
5. IMPORTANT: Prices must be given in the "unit of quantity" we ask for. Example: If we ask for an item by the "piece," bid by the "piece," if we ask for it by the "foot," bid by the "foot," etc.
6. FIRM PRICES: No bid will be accepted if sent to us marked-"Price prevailing at time of delivery." After the date and time of bid closing, no price increase will be allowed, unless as otherwise stipulated by the State's bid solicitation documents.
7. BID SUBMISSIONS: Your bid envelope must be SEALED and plainly marked in the LOWER left corner with the following: (1) the name of the item or service being bid; (2) bid opening date and time; and (3) the bid number. Your return address should appear in the UPPER left corner. All bid sheets and the bid solicitation signature form containing an original authorized signature executing the bid must be submitted in a sealed envelope or package. (Do not respond to more than one bid number in the same envelope!) A bid submitted using "Express/Overnight" services must be shipped in a separate sealed inner envelope/package identified as stated above, and enclosed inside the "Express/Overnight" shipping container or package. No responsibility will attach to the State or any official or employee thereof, for the pre-opening of, post-opening of, or the failure to open a bid not properly addressed and identified.
8. BID FORM: Bidders shall use this bid proposal form when submitting their bid or proposal. Bids not submitted with the bid solicitation signature page form shall be found non-responsive and will not be considered. No additional or supplemental terms and conditions submitted by the bidder as part of the bid response shall be evaluated or considered. Any and all such additional terms and conditions shall have no force and effect and shall be inapplicable to this bid and ensuing contract. If additional or supplemental terms and conditions either intentionally or inadvertently appear separately in transmittal letters, specifications, literature, price lists or warranties, it is understood and agreed that the general and special conditions in this bid solicitation are the only conditions applicable to the bid or any ensuing contract and the bidder's authorized signature affixed to the bid solicitation signature form attests to this.

9. **LATE BIDS:** It is the bidder's responsibility to assure that the bid is delivered to the place designated for receipt of bids on or before the date and time specified for bid opening. Late bids will not be considered under any circumstances. The official time used in the receipt of bids is the prevailing local time as evidenced by the automatic time/date stamp located in the Division of Purchasing office. No responsibility will be assumed for delays in the delivery of mail by the U.S. Post Office, private couriers, or the intra-state mail system. **LATE BIDS WILL BE DECLARED REJECTED AND RETURNED TO THE BIDDER . NO DEVIATIONS WILL BE ALLOWED.**

10. **BID WITHDRAWALS:** Bids may be withdrawn by telegraphic request (no facsimile) or in writing on company letterhead signed by an authorized representative. The Division of Purchasing must receive bid withdrawal requests in correct form **PRIOR** to the bid opening date and time. Bids may also be withdrawn in person before bid closing time upon presentation of appropriate identification. After bid closing, bid withdrawals and/or cancellations may not be made unless legitimate error has been made, but such action makes bidder liable to "not responsible" finding. Unless otherwise stipulated by the State in other bid solicitation documents, the bid will remain firm and may not be withdrawn for sixty (60) days following the bid opening date.

11. **REJECTION OF BIDS:** The Administrator of the Division of Purchasing shall have the right to accept or reject all or any part of a bid or any and all bids when: (1) it is in the best interests of the State of Idaho; or (2) the bid does not meet the minimum bid specifications; or (3) the bid is not the lowest responsible bid; or (4) a finding is made based upon available evidence that a bidder is not responsible or otherwise capable of currently meeting specifications or assurance of ability to fulfill contract performance; or (5) the item offered deviates to a major degree from the bid specifications, as determined by the Administrator (minor deviations, as determined by the Administrator, may be accepted as substantially meeting the bid requirements of the State of Idaho). Deviations will be considered major when such deviations appear to frustrate the competitive bidding process or provides a bidder an unfair advantage.

12. **SPECIAL BRANDS:** Special brands when named are only to indicate the standard of quality desired. Bidders may bid on their equal, except when specification or bid form requires no substitution. Offerings on other brands, if their equal, may be considered, but brands or descriptions of the equal must be plainly stated. "Equal" means any other brand that is equal in use, quality, economy, and performance to the brand listed. If the bidder lists a trade name and/or catalog number in the bid, the State will assume the item meets the specifications unless the bid clearly states it is an alternate, and describes specifically how it differs from the item specified. **MULTIPLE OR ALTERNATE BIDS WILL NOT BE ACCEPTED UNLESS SO STATED IN THE SPECIFICATIONS.**

13. **BID SIGNATURES:** The bid solicitation signature page form *must be* manually signed in ink by an authorized agent of the bidder *and* returned with your bid package. Bids must be submitted in writing. No oral, telephone, facsimile, telegraphic, or late bids will be considered.

14. **BURDEN OF PROOF:** ANY VARIATIONS of brand names or deviations from the specifications **MUST BE CLEARLY STATED.** It shall be the responsibility and burden of the bidder to furnish the State with the original bid submission sufficient data to determine if the goods or services offered conform to the bid specifications.

15. **ORAL INFORMATION:** The Division of Purchasing will not be responsible for any verbal or oral information given by the requisitioning agency regarding this bid. Questions concerning this bid must be directed in writing to the Division of Purchasing in sufficient time prior to the bid opening to permit an answer by the Division of Purchasing in writing. Bids deviating from the

specifications contained herein by any means other than an authorized written addendum by the Division of Purchasing will be subject to rejection. Bidder's reliance on any oral representation is at the bidder's peril and the Division of Purchasing disclaims responsibility for oral representations. Questions will not be considered if received less than five (5) working days before the bid opening.

16. NO BID: If not submitting a bid, the bidder should respond by returning the bid solicitation signature page form, mark it "NO BID" and explain the reason, and complete the company name section at the bottom of the bid page. The bidder may be removed from the bidders list by failure to respond five (5) times in succession.

17. PAYMENT: Unless otherwise specified by the State in the bid documents, payment will be made after acceptance of the conforming property and after receipt by the requisitioning agency of a proper invoice. In general, no advance or progress payments will be made.

18. DOMICILE OF BIDDER: The bidder is to provide information WITH THE BID on the bidder's state of domicile. If the bidder is unsure of where the business is domiciled, the following "rules of thumb" may help:

- a. Corporation: Domiciled where chartered (state of incorporation).
- b. Partnership: Domiciled where permanent headquarters of business is located.
- c. Sole Proprietor: Domiciled where permanent headquarters of business is located.

19. BID MODIFICATION: Any bidder may modify his bid with a written communication over the signature of the bidder at any time prior to the closing of the bid. Notice of a modification of a bid may be submitted by telegraphic (not facsimile) communication, provided that the bid and the telegram are received prior to the closing date and time of the bid. This modification (if telegraphic) must be confirmed in writing, over an original signature of the bidder. The written confirmation of the modification must be mailed and postmarked no later than the closing date of the bid. The letter or telegram should be so worded as not to reveal the amount of the original bid. If the written confirmation of a modification is not received within two (2) days from the bid closing date, no consideration will be given to the telegraphic modification. Any telegraphic communication relative to a bid must state the bid closing date, time and the bid number. On written communications, the bid closing date, time, and bid number, should appear on the outside of the envelope to prevent premature disclosure of the information.

20. AWARD METHOD: Title 67, Chapter 57, Section 67-5716, Paragraph 12, of the Idaho Code defines the Lowest Responsible Bidder as, "The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications in determining the lowest acquisition price." When deemed to be in the best interest of the State, additional consideration may be given to the elements of discounts, supply location, quality of products or previous service, delivery time, or other elements that may be considered advantageous to the State.

21. DELIVERY TIMES: Bidders shall list, in the appropriate place on the bid document, the normal delivery times required for each item listed.

22. **FIRM BIDS:** Prices offered on the bid or included in the Agreement shall not fluctuate for the period of the Agreement, unless otherwise specified by the State in the bidding documents or other terms of the Agreement.

23. **PACKAGING:** Bidders are to list their standard packaging for the items listed if other than specified.

24. **SPECIFICATIONS:** Any variance from the specifications herein listed must be clearly pointed out in writing by the bidder, including information for comparison purposes; otherwise it will be considered that those items are in strict compliance with these specifications. To be valid, all such exceptions or variances taken must be submitted with or on the original bid document.

25. **DETERMINATION OF RESPONSIBILITY:** The State reserves the right to make reasonable inquiry to determine the responsibility of a bidder. Such requests may include but not be limited to financial statements, credit ratings, references, past performance, etc. The unreasonable failure of a bidder to promptly supply the requested information with respect to such bidder may result in disqualification of the bid. Except as otherwise provided by law, information furnished by the bidder pursuant to this provision may not be disclosed outside the Division of Purchasing or using agency without prior written consent of the bidder.

26. **PUBLIC RECORDS:** Idaho Public Records Law, Idaho code sections 9-337 through 9-348, allows the open inspection and copying of public records which may include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by an state or local agency regardless of the physical form or character. Certain information contained in your response to the state's Invitation to Bid or Request for Proposals may be considered a public record. The Public Records Law contains certain exemptions found at Idaho Code section 9-340. One of the listed exemptions is that of trade secrets which include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons; and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy. Prices quoted in your bid or proposal are not a trade secret. If you consider any element of a bid or proposal to be a trade secret, or otherwise protected from disclosure, you must so indicate by marking each page of the pertinent document. Include the specific basis for the your request that it be treated as confidential. The state, to the extent allowed by law, will honor such a request. You will be required to defend any claim of trade secret or other basis for nondisclosure in the event of an administrative or judicial challenge to the state's nondisclosure. Any questions regarding the applicability of the Public Records Law should be addressed to the agency for its review or should be presented to your own legal counsel.

27. **PRIOR ACCEPTANCE OF DEFECTIVE BIDS:** Due to the limited resources of the State, the State generally will not completely review or analyze bids which on their faces fail to comply with the requirements of the bidding documents or which clearly are not the best bids, nor will the State generally investigate the references or qualifications of those who submit such bids. Therefore, any acknowledgment that the selection is complete shall not operate as a representation by the State that an unsuccessful bid was complete, sufficient, or lawful in any respect.

28. **LENGTH OF CONTRACT:** Idaho Code, Title 67, Chapter 57, Section 67-5717, Paragraph 9, reads as follows: "The Administrator of the Division of Purchasing may enter into contracts, including leases and rentals, for periods of time exceeding one (1) year provided that such contracts contain no penalty to or restriction upon the State in the event cancellation is necessitated by a lack of financing for any such contract or contracts."

29. LEASE-PURCHASE OPTIONS: Title 67, Chapter 57, Section 67-5721 of the Idaho Code reads, in part, as follows: "Any exercise of an option to acquire (goods, services, parts, supplies and equipment), or any other procedure which shall serve to pass title to the state where no passage of title existed before, shall be deemed to be a new acquisition and prior to execution all applicable provisions and procedures of this chapter [67-5714 through 67-5744] shall be exercised (NOTE: This provision is NOT applicable to Time Purchase Contracts).

9.7.4 Standard Terms and Conditions

TERMINATION: The State may terminate the Agreement when the Contractor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days, after receipt of such notice. If the Agreement is terminated for non-compliance, the Contractor will be responsible for any direct costs and/or damages incurred by the State for placement of a new contract. The State, upon termination, reserves the right to take any appropriate legal action it may deem necessary.

OPTIONS: If this is a term contract, upon mutual agreement by both parties, the Agreement may be extended under the same terms and conditions of this Agreement for one (1) year intervals or the time interval equal to the original contract period.

FIRM PRICES: Prices shall not fluctuate for the period of the Agreement, unless otherwise specified by the State in the bidding documents or other terms of the Agreement.

CHANGES/MODIFICATIONS: Changes of specifications or modification of this Agreement in any particular can be effected only upon written consent of the Administrator, Division of Purchasing, but not until any proposed change or modification has been submitted to him in writing, signed by the one proposing the said change.

CONFORMING GOODS AND/OR SERVICES: The goods and/or services shall minimally conform in all respects with the specifications as indicated in the State's bid solicitation documents. In event of nonconformity, and without limitation upon any other remedy, the State shall have no financial obligation in regard to the non-conforming goods and/or services.

OFFICIAL, AGENT AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE: It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Idaho be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.

ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE: Acceptance of this Agreement binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964 in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No other wise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving Federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the

Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et sequence, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. The Contractor must include this provision in every subcontract relating to purchases by the State to insure that subcontractors and vendors are bound by this provision.

TAXES: The State of Idaho is generally exempt from payment of Idaho State Sales and Use Tax under the authority of Idaho Code, Title 63, Chapter 36, Section 63-3622 as a Government Instrumentality for property which it purchased for its use. In addition, the State is generally exempt from payment of Federal Excise Tax under a permanent authority from the District Director of the Internal Revenue Service. Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State of Idaho, it shall be solely and absolutely responsible for the payment of those taxes. However, after execution of this Agreement and after a reasonable time to appeal any future Idaho political subdivision tax assessments, the State of Idaho will be responsible for any future personal property taxes for items that are subject to this Agreement.

SAVE HARMLESS: Contractor shall indemnify and hold harmless the State of Idaho from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney fees, caused by or which arise from the, negligent or wrongful acts or omissions of the Contractor, its employees, agents, or subcontractors under this Agreement which cause death or injury or damage to property; or arising out of a failure to comply with any state or federal statute, law, regulation or act. **IN NO EVENT WILL THE CONTRACTOR BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES.** Contractor shall have no indemnification liability under this section for death, injury, or damage arising out of the negligence or misconduct of the State.

ORDER NUMBERS: Agreement order numbers or purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

CONTRACTOR RESPONSIBILITY: The Contractor shall be required to assume responsibility for production and delivery of all material and services offered in the proposal, whether or not the Contractor is the manufacturer or producer of them. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of items selected.

SUBCONTRACTING: Unless otherwise allowed by the State in the Request for Proposal, the Contractor shall not, without written approval from the Administrator, Division of Purchasing, enter into any subcontract relating to the performance of this

Agreement or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of responsibility for the professional and technical accuracy and adequacy of the work. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Agreement by Contractor's subcontractor or its sub-subcontractor.

STATE OF IDAHO MINIMUM WAGE LAW: It will be the responsibility of the Contractor to fully comply with the State of Idaho code regarding the minimum wage law for residents hired to help on projects and jobs in Idaho.

COMMODITY STATUS: It is understood and agreed that any item offered or shipped shall be new and in first class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by the State in the bidding or specification documents. Demonstrators, previously rented, refurbished, or reconditioned items are not considered new except as specifically provided in this section. New means items which have not been used previously and are being actively marketed by the manufacturer or Contractor. The items may contain new or minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer's new product standards. The items must have the State of Idaho as their first customer and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). The new items offered must be provided with a full, unadulterated, and undiminished new item warranty against defects in workmanship and materials. Unless modified by other specifications in the bidding documents, the warranty is to include replacement, repair, and any labor for the period of time stated by the Contractor in the bid response or the period of time required by other specifications, whichever is longer.

SHIPPING AND F.O.B. POINTS: All orders will be shipped directly to the ordering departments at the location specified, on an F.O.B. Destination freight prepaid and allowed basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. F.O.B. Destination, unless otherwise specified in the Agreement or bid solicitation documents, shall mean delivered to the State Agency Receiving Dock or Store Door Delivery Point, unless a different location is specified by the State in the bid solicitation documents. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations. If installation is requested by the State or specified in the State's bidding documents, pricing shall include all charges associated with a complete installation at the location specified.

INVOICING: ALL INVOICES are to be sent directly to the ORDERING DEPARTMENT ONLY. Agreement number and/or purchase order numbers are to be shown on all invoices. In no case are invoices to be sent to the Division of Purchasing.

RISK OF LOSS: The Contractor agrees to bear all risk of loss, injury, and destruction of goods; and material ordered herein which occur prior to delivery; and such loss, injury or destruction shall not release the Contractor from any obligation hereunder.

ASSIGNMENTS: No contract or order or any interest therein shall be transferred by the contractor or vendor to whom such contract or order is given to any other party, without the approval in writing of the Administrator, Division of Purchasing. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the State. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the State.

PROHIBITED CONTRACTS: No member of the legislature or officer or employee of any branch of the state government shall directly himself, or by any other person execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the State of Idaho, if made by, through or on behalf of the department in which he is an officer or employee; or if made by, through or on behalf of any other department unless the same are made after competitive bids.

PAYMENT PROCESSING: Title 67, Chapter 57, Section 67-5735 of the Idaho Code reads as follows: "Within ten (10) days after the property acquired is delivered as called for by the bid specifications, the acquiring agency shall complete all processing required of that agency to

permit the contractor to be reimbursed according to the terms of the bid. Within ten (10) days of receipt of the document necessary to permit reimbursement of the contractor according to the terms of the contract, the State Controller shall cause a warrant to be issued in favor of the contractor and delivered."

GOVERNMENT REGULATIONS: Contractor guarantees that all items meet or exceed those requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection Agency, or other regulatory agencies.

HOT GOODS: The Contractor hereby certifies that all goods provided under this Agreement are produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and the regulation and orders of the United States Department of Labor issued under Section 14 thereof and other applicable provisions of the Fair Labor Standards Act.

YEAR 2000 WARRANTY - COMMERCIAL ITEMS: The Contractor warrants that each hardware, software, and firmware product (or item containing a hardware, software, and firmware component) delivered under this Agreement shall be able to accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by the Contractor, provided that all listed or unlisted products (e.g. hardware, software, firmware) are used in combination with such listed product and properly exchange date data with it. If the Agreement requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system. The duration of this warranty and the remedies available to the State for breach of this warranty shall be defined in, and subject to, the terms and limitations of the Contractor's standard commercial warranty or warranties contained in this Agreement, provided that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to the State under this warranty shall include repair or replacement of any listed product whose non-compliance is discovered and made known to the Contractor in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this Agreement with respect to defects other than Year 2000 performance.

PATENTS AND COPYRIGHT INDEMNITY

a. Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States patent, copyright, trade secret, or trademark for items purchased under this Agreement. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the State of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and (iii) should the item(s) become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States patent, that the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the item(s), to replace or modify the item(s) so that it becomes non-infringing, or to grant the State a full refund for the purchase price of the item(s) and accept its return.

b. Contractor shall have no liability to the State under any provisions of this clause with respect to any claim of infringement which is based upon the combination or utilization of the item(s) with machines or devices not provided by the Contractor other than in accordance with

Contractor's previously established specifications or the modification by the State of the item(s) or the use of the item(s) not in accordance with Contractor's previously established specifications.

CONFIDENTIAL INFORMATION: Pursuant to this Agreement, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other information that the State regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the State. Contractor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose Confidential Information or any advice given by it to the State to any third party except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then, only upon timely notice to the State. The State may require that Contractor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. Confidential Information shall be returned to the State upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. "Confidential Information" shall not include data or information that:

- a. is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;
- b. becomes generally available to the public other than as a result of disclosure by Contractor; or
- c. becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

USE OF THE STATE OF IDAHO NAME: Contractor agrees that it will not, prior to, in the course of performance of this Agreement (or any order), or thereafter use the State's name in any advertising or promotional media as a customer or client of Contractor without the prior written consent of the State.

APPROPRIATION BY LEGISLATURE REQUIRED: It is understood and agreed that the State is a government entity and this Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. The State reserves the right to terminate this Agreement (or any order placed under it) if, in its judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments. All future rights and liabilities of the parties hereto shall thereupon cease within ten (10) days after notice to the Contractor. It is understood and agreed that the State's payments herein provided for shall be paid from Idaho State Legislative appropriations and, in some instances, direct federal funding.

FORCE MAJEURE: Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the Contractor shall notify the Administrator, Division of Purchasing promptly in writing of any cause for delay and the Administrator, Division of Purchasing concurs that the delay was beyond the control and without the fault or negligence of the Contractor. If reasonably possible, the Contractor shall make every reasonable effort to complete performance as soon as possible.

GOVERNING LAW: This Agreement shall be construed in accordance with, and governed by the laws of the State of Idaho. Except to the extent the provisions of the Agreement are clearly inconsistent therewith, the Agreement shall also be governed by the applicable provisions of the Idaho Uniform Commercial Code (IUCC). To the extent this Agreement entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the IUCC, except where deeming such services as "goods" would result in a clearly unreasonable interpretation. Any action to enforce the provisions of this Agreement shall be brought in District Court in Ada County, Boise, Idaho.

NOTICE OF CONTRACT EFFECTIVENESS: It is understood that this document or any resulting contract or amendment is not effective until the appropriate State purchasing official has signed the document, contract, or amendment, the effective or award date has been completed on the document by the State purchasing official, and that date has arrived or passed. Neither the Contractor nor his organization will provide goods or render services to the State under the terms of this document, contract, or amendment until such document, contract, or amendment has been fully signed by the State purchasing official and the Contract has become effective. Furthermore, the State is in no way responsible for reimbursing the Contractor for goods provided or services rendered prior to the appropriate signature by the State purchasing official and the arrival of the effective date of the Contract.

ENTIRE AGREEMENT: This Agreement, with the State's Invitation to Bid or Request for Proposal, including any addendums (such document may be incorporated by reference as though herein set out in full) and the Contractor's bid response, to the extent it is not in conflict with the bid specifications (such document may be incorporated by reference as though herein set out in full), constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous bids or proposals, both oral and written, negotiation, representations, commitments, and all other communications between the parties. Where terms and conditions specified in the State's bidding documents or Contractor's response differ from those specifically stated in this Agreement, the terms and conditions of this Agreement shall apply. It may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties. The terms of the Agreement shall prevail notwithstanding any variances with the terms and conditions of any other order submitted by the State of Idaho.

9.8 Division of Purchasing Rules Regarding Request For Proposals

IDAPA 38.05.01

166. USE OF COMPETITIVE SEALED PROPOSALS.

01. Appropriateness. Competitive sealed proposals may be a more appropriate method for a particular acquisition or type of acquisition than competitive sealed bidding, after consideration of factors such as:

- a. whether the relative skills, expertise, or technical capability of the offerors will have to be evaluated;
- b. whether cost is secondary to the characteristics of the property or service sought, as in a work of art;

c. whether the conditions of the service, property or delivery conditions are unable to be sufficiently described in the Invitation to Bid; and

d. whether the acquisition is for highly complex or technical property or services and evaluation of the offeror's approach, management capabilities, innovation, or other technical factors are secondary to cost.

02. Determinations.

a. Before a solicitation (Request for Proposal) may be issued for competitive sealed proposals, the buyer shall determine in writing that competitive sealed proposals represents a more appropriate method for contracting than competitive sealed bidding.

b. The buyer may make such determinations by commodity code or service, rather than by individual acquisition. Acquisitions utilizing the types of commodity codes so designated may then be made by competitive sealed proposals without making the determination that competitive sealed bidding is either not practicable or not advantageous. The buyer who made such determination may modify or revoke it at any time and such determination should be reviewed for current applicability from time to time.

03. Professional and Consultant Services. For acquisition of professional or consultant services, agencies shall, whenever practicable, bid for such services by means of a Request for Proposal. Examples of professional or consulting services difficult to use the Invitation to Bid process include, but are not limited to, accounting and auditing, court reporters, legal, medical, nursing, education, engineering, technical consulting, actuarial, architecture, and management audits and research. The buyer will make the

167. CONTENT OF THE REQUEST FOR PROPOSALS.

01. Content. The content of a Request for Proposals (RFP) shall be similar with that of an Invitation to Bid.

02. Proposal Preparation Time. Proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. A minimum of 10 working days shall be provided unless a shorter time is deemed necessary due to an emergency for a particular acquisition as determined in writing by the buyer.

03. Form of Proposal. The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals.

168. PUBLIC NOTICE. Public notice shall be given by distributing the Request for Proposals in the same manner provided for distributing an Invitation to Bid.

169. PRE-PROPOSAL CONFERENCES. Pre-proposal conferences may be conducted in accordance in the same manner provided for Invitations to Bid. Any such conference should be held prior to submission of initial proposals.

170. AMENDMENT, MODIFICATION, OR WITHDRAWAL OF PROPOSALS. Proposals may be amended, modified, or withdrawn prior to the established due date and time in accordance with the rules pertaining to Invitations to Bid.

171. LATE PROPOSALS, LATE WITHDRAWALS, AND LATE MODIFICATIONS. Any proposal, withdrawal, or modification received after the established due date and time at the place designated for receipt of proposals is late. Such late documents may only be considered in documenting a mistake and used to withdraw a proposal due to the mistake.
172. RECEIPT AND RECORD OF PROPOSALS. Proposals shall be opened publicly, identifying only the names of the offerors unless otherwise stated in the Request for Proposals. Proposals and any amendments or modifications shall be date and time stamped upon receipt and held in a secure place until the established due date. After the date and time established for receipt of proposals, a record of all proposals received shall be prepared to include the name of each offeror, the number of amendments or modifications received, if any, and a description sufficient to identify the supply, service, or property offered. The record of proposals shall be open to public inspection in accordance with the provisions of the Idaho Public Records Act. Proposals and modifications shall be shown only to purchasing agency personnel having a legitimate interest in them.
173. EVALUATION OF PROPOSALS.
01. Evaluation Factors in the Request for Proposals. The Request for Proposals shall state in general terms all of the evaluation factors and their relative importance, including price.
02. Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used but are not required. Factors not specified in the Request for Proposals shall not be considered in evaluating offers or determining award of contract.
03. Classifying Proposals. For the purpose of conducting proposal discussions under these rules (Proposal Discussions with Individual Offerors), proposals shall be initially classified as:
- a. acceptable;
 - b. potentially acceptable, that is reasonably susceptible of being made acceptable; or
 - c. unacceptable.
174. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS.
01. "Offerors" Defined. For the purposes of this rule, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses which submitted unacceptable proposals.
02. Purposes of Discussions. Discussions are held to facilitate and encourage an adequate number of potential offerors to offer their best proposals, by amending their original offers, if needed.
03. Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The buyer should establish procedures and schedules for conducting discussions. If during discussions there is a need for clarification or change of the Request for Proposals, it shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

04. Best and Final Offers. The buyer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the buyer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing agency's interest, and additional discussions will be conducted or the agency's requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

175. (RESERVED)

176. MISTAKES IN PROPOSALS.

01. Mistakes Discovered Before the Established Due Date and Time. An offeror may correct mistakes discovered before the time and date established for receipt of proposals by withdrawal or modification of the proposal as provided in these rules.

02. Mistakes Discovered After Receipt But Before Award. This subsection sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

a. Minor Informalities. Minor informalities shall be treated as they are under competitive sealed bidding (Invitation to Bid).

b. Correction of Mistakes. Mistakes may be corrected and the correct offer considered only if:

i. the mistake and the correct offer are clearly evident on the face of the proposal in which event the proposal may not be withdrawn; or

ii. the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the correct offer and such correction would not be contrary to the fair and equal treatment of other offerors.

c. Withdrawal of Proposals. The offeror may be permitted to withdraw the proposal if:

i. the mistake is clearly evident on the face of the proposal and the correct offer is not; or

ii. the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the correct offer or, if the correct offer is also demonstrated, to allow correction on the basis of such proof would be contrary to the fair and equal treatment of other offerors.

03. Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

177. AWARD.

01. Award Documentation. A written determination shall be made showing the basis on which the award was found to be most advantageous for the agency based on the evaluation criterion set forth in the Request for Proposals. Final approval for the award will be made by the Division.

02. Public Inspection of Proposals. After issuance of notice of intent to award, the Idaho Public Records Act will control the extent of public inspection of proposals received by the Purchasing Activity.

03. One Proposal Received. If only one proposal is received in response to a Request for Proposals, the buyer may, as such buyer deems appropriate, either make an award, reject the proposal, or if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.

178. PUBLICIZING AWARDS.

01. Notice. After a contract is entered into, notice of award shall be available in the Purchasing Activity's office.

02. Appeals. Any appeals concerning the award shall be made according to these rules.

179. ACCEPTANCE OR REJECTION OF PROPOSALS. The Administrator or Purchasing Activity shall have the right to accept or reject all or any part of a proposal in accordance with the rules pertaining to Invitations to Bid.

180. CANCELLATION OF REQUEST FOR PROPOSALS OR REJECTION OF ALL PROPOSALS. The Administrator or Purchasing Activity reserves the right to reject all proposals or to cancel a Request for Proposals in accordance with the rules pertaining to Invitations to Bid.

10. EVALUATION AND AWARDS

10.1 Lowest Responsible Bidder

Generally awards are always made to the lowest responsible bidder defined as the responsible bidder whose bid conforms in all material respects to the Invitation To Bid, Request For Quotation, or Request For Proposal and which reflects the lowest acquisition price to be paid by the state.

10.2 Exceptions To Lowest Bidder

In cases of weighted analysis, cost is only one factor in the determination of award. Other factors may include evaluation of specifications, comparative performance examinations, vendor references, etc. Relative scores are assigned to each factor, including price, to determine the lowest acquisition cost. This method is generally used only in Request For Proposals.

10.3 Definitions

Cost Analysis. This means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, cost to be reimbursed, or costs actually incurred. May include the principals of life cycle costing which measures not only the initial acquisition cost, but may also include operating and maintenance costs, present value analysis, disposal costs, or salvage value.

Cost Data. Cost data means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Life Cycle Costing. This means the total cost of an item, including initial purchase price, operating supplies, maintenance, repairs, salvage value, and disposal costs.

Lowest Responsible Bidder. The responsible bidder whose bid conforms in all material respects to the Invitation to Bid or Request for Proposal and which reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price.

Multi-Step Sealed Bidding. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the purchasing activity, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

Price Analysis. This means the evaluation of price data without analysis of the separate cost components and profit which may assist in arriving at prices to be paid or costs to be reimbursed.

Price Data. This means factual information concerning prices for property or services substantially identical to those being purchased. Prices in this definition refer to offered or proposed selling prices. The definition refers to data relevant to both prime and subcontract prices.

Weighted Analysis. This is a method of evaluation that considers other factors in addition to cost in awarding a bid or proposal. The identified factors are weighted according to importance in the overall

purchasing decision. They may include usability, flexibility, maintenance, company resources, financial stability, previous experience, references, or approaches to solving problems.

10.4 The Idaho Reciprocal Preference Law

Some states provide a preference for vendors within their borders and add a percentage to bids received from outside states. Where that happens, the State of Idaho responds in like manner by adding the same percentage to bids received from vendors who are not “domiciled” in Idaho. This applies to the purchases of materials, supplies, equipment, or services (services added 7-1-98).

10.4.1 Idaho Statute 67-2349

PREFERENCE FOR IDAHO SUPPLIERS FOR PURCHASES. To the extent permitted by federal laws and regulations, whenever the State of Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract for purchase of any materials, supplies [and services, added 7-1-98, SLC148] or equipment, the bidder domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible bidder domiciled in Idaho as would be required for such an Idaho domiciled bidder to succeed over the bidder domiciled outside Idaho on a like contract being let in his domiciliary state. For the purposes of this section, any bidder domiciled outside the boundaries of the state of Idaho may be considered as an Idaho domiciled bidder, provided that there exists for a period of one (1) year preceding the date of the bid a significant Idaho economic presence as defined herein. A significant economic presence shall consist of the following: (a) That the bidder maintain in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and (b) If a corporation be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

10.4.2 How it Affects Purchasing

The law is applicable to both formal bids (over \$25,000) and informal quotes (\$1,500 to \$25,000). It is not applicable to purchases that are not competitively bid, such as:

- small purchases under \$1,500 that are not competitively bid....however, if small purchases are bid, regardless of the dollar amount, then the reciprocal law takes effect
- sole source purchases
- emergency purchases
- other purchases that are exempt from bidding (Rehabilitation Agencies, Correctional Industries, The Federal Government, Professional and Consultant Services under \$25,000, Repair Services for Real Property under \$2,500, Repair Services for Equipment under \$5,000, Statewide and Agency Contracts and Price Agreements, Training Travel, Lodging, Seminars, and Meeting Rooms under \$25,000, and any other purchase that may be exempted from bidding by the Division of Purchasing)

10.4.3 How Applied to Bids

In determining the lowest responsible bidder, a percentage increase should be added to each out-of-state bidder's bid price which is equal to the percent of preference given to local bidders in the bidder's home state. That is, if the low bidder is from a state that grants a 10 percent preference to its own in-state bidders, the Idaho agency must add 10 percent to that bidder's price when evaluating the bid. It is only applied to bid evaluations when comparing bids from Idaho domiciled vendors with bids from out-of-state vendors with a preference in their state. There is no need to apply any percentage when comparing one out-of-state bid with another out-of-state bid. In no instance will the increase (penalty percentage) actually be paid to a vendor whose bid is accepted.

10.4.4 Definition of "Domiciled"

Domiciled means where a corporation is chartered or incorporated or where a sole proprietor or partnership is located or has its permanent headquarters. Bidders domiciled in states other than Idaho who have a "significant Idaho economic presence" for one year preceding the bid date, may be considered an Idaho domiciled bidder.

10.4.5 Definition of "Significant Idaho Economic Presence"

Significant Idaho Economic Presence is a phrase defined in Idaho Statute 67-2349 that means a vendor is considered "domiciled" if they have maintained a staffed office, sales office, sales outlet, manufacturing facility, or warehouse for at least one (1) year and, if a corporation, be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

10.4.6 List of States and their Preferences

This information is available on the internet at two sites. Either of these sites may be accessed directly or through RELATED LINKS from the Idaho Purchasing Homepage.

- NIGP (<http://www.nigp.org>) - The National Institute of Governmental Purchasing provides preference information. You must be a member of NIGP to access this information.
- State of Oregon (<http://tpps.das.state.or.us/purchasing/recplaw.html>) - Oregon provides the same information free of charge. From the above web site, click on PURCHASING LINKS and then on OREGON RECIPROCAL PREFERENCE LAW to access this information.

10.4.7 Canadian Preferences

The Idaho Reciprocal Preference Law is not limited to the United States. It applies to any bidder who is domiciled outside Idaho. Some of the ten provinces and two territories of Canada have a preference for Canadian suppliers and products. To our knowledge, this is the current information regarding Canadian preferences.

Alberta	AB allows for up to 10% preference for Canadian value-added or may limit bids to Canadian goods or suppliers.
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British Columbia	BC has a program called BC MAX. Basically it allows awards to Canadian suppliers for purchases of goods under \$25,000 and services under \$100,000. Goods over \$25,000 and services over \$100,000 receive a 20% preference.
Manitoba	No preference information available
New Brunswick	NB may elect to give preference to local suppliers when goods purchased are less than \$25,000 and services less than \$50,000. They may also give preference to other Atlantic provinces suppliers or other Canadian suppliers when costs of services are less than \$100,000. Further, they may give up to a 10% preference to Canadian value-added suppliers when goods exceed \$25,000 and services exceeds \$50,000.
New Foundland & Labrador	NF uses a Provincial Content Factor to give preference to local suppliers. It is a combination of the Provincial Overhead Allowance (up to 10% preference based the supplier's presence n the province), the Provincial Labour (dollar value of labour), and the Provincial Material (dollar value of raw material from the province). The Provincial Content factor (preference) is calculated from these three areas and applied to the bid.
Northwest Territories	NT uses a Business Incentive program. It gives a preference to northern business to offset the cost of doing business in NT. For all purchases over \$1,000 and under \$5,000 a 20% discount is applied for bid evaluation purposes. For purchases over \$5,000 a 15% discount is applied for Northern Content and an additional 5% discount for Local content. Also, contracts valued under \$30,000 are bid to only northern firms as long as there are at least two.
Nova Scotia	No preference information available
Ontario	The Canadian Content Statement allows a 10% preference for Canadian content in goods and services.
Prince Edwards Island	No preference information available
Quebec	No preference information available
Saskatchewan	No preference information available
Yukon Territory	YK has no published preference percentage or discount policy but, to stimulate the local economy, YK has a Business Incentive Policy that rebates local suppliers a percentage of labor and product costs. YK also attempts to contract for services and goods in local communities where possible and makes best efforts to hire locally for construction contracts.

If you have any questions about applying the Idaho Reciprocal Preference Law regarding Canadian bidders please call the Division of Purchasing at 327-7465.

10.5 Special Printing Preference

There are special requirements for solicitations of printing. *Idaho Code 60-101, 60-103* specifies that printing should be done within the State of Idaho unless the cost is shown to be 10% higher than printing done outside of the State. Quotations or Bids that indicate that all or any portion of a printing job is to be done outside of the State of Idaho, must have an additional 10% added to the price quoted or bid by the vendor. This requirement is for bid evaluation **only**, and is not added to any purchase order or contract. Reference the Chapter on Printing in this guide for more information.

10.6 Division of Purchasing Rules Regarding Bid Evaluations and Awards

IDAPA 38.05.01

100. BID EVALUATION AND AWARD. The Purchasing Activity conducting the bid shall determine the low responsible bidder after evaluating the bids. Any contract award shall comply with these provisions.
01. General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. The Invitation to Bid shall set forth the requirements and criteria which will be used to determine the lowest responsive and responsible bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation to Bid.
02. Bid Responsiveness. Responsiveness is defined as that bid which conforms in all material respects to the Invitation to Bid.
03. Standards of Bidder Responsibility. Nothing herein shall prevent the buyer from establishing additional responsibility standards for a particular purchase, provided that these additional standards are set forth in the solicitation. Among factors to be considered in determining whether the standard of responsibility has been met are whether a bidder has:
- a. available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;
 - b. a satisfactory record of integrity;
 - c. qualified legally to contract with the purchasing activity and qualified to do business in the state of Idaho;
 - d. unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility;
 - e. experience; or
 - f. prior performance record, if any.
04. Information Pertaining to Responsibility. A bidder shall supply information requested by the buyer concerning the responsibility of such bidder. If such bidder fails to supply the requested

information, the buyer shall base the determination of responsibility upon any available information or may find the bidder nonresponsible if such failure is unreasonable.

05. Ability to Meet Bidder Responsibility Standards. The bidder may demonstrate the availability of necessary financing, equipment, facilities, expertise, personnel and other necessary information by submitting upon request:

- a. evidence that such bidder possesses such necessary items;
- b. acceptable plans to subcontract for such necessary items; or
- c. a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

06. Written Determination of Nonresponsibility Required. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the buyer. The determination shall be made part of the purchase file.

07. Determination of Lowest Responsible Bidder. Bids will be evaluated to determine overall economy for the intended use, in accordance with the evaluation criteria set forth in the Invitation to Bid. Examples of such criteria include but are not limited to, transportation cost, energy cost, ownership and other identifiable costs or life-cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall:

- a. be reasonable estimates based upon information the Purchasing Activity has available concerning future use;
- b. treat all bids equitably;
- c. review the ability, capacity and skill of the bidder to perform the contract or provide the services required;
- d. review the character, integrity, reputation, judgment, experience and efficiency of the bidder;
- e. review whether the bidder can perform the contract within the time specified;
- f. review the quality of performance on previous contracts for purchased property or services;
- g. review the previous and existing compliance by the bidder with the laws relating to the contract for property and/or services;
- h. review servicing resources, capability and capacity;
- i. review lack of uniformity or interchangeability, if such factors are important;
- j. review the energy efficiency of the product as projected throughout the anticipated useful life of the product;
- k. review such other information as may be secured having a bearing on the decision to award the contract.

08. Extension of Time for Bid Acceptance. After opening bids, the buyer may request bidders to extend the time during which their bids may be accepted, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented.

09. Only One Bid Received. If only one responsive bid is received in response to an Invitation to Bid (including multi-step bidding), an award may be made to the single bidder if the buyer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise, the bid may be rejected and:

- a. new bids or offers may be solicited;
- b. the proposed acquisition may be canceled; or
- c. if the buyer determines in writing that the need for the property or service continues but that the likely be futile, the purchase may then be conducted as a sole source or emergency purchase as appropriate.

10. Multiple or Alternate Bids. Unless multiple or alternate bids are specifically provided for, the solicitation shall state they will not be accepted. When prohibited, the multiple or alternate bids shall be rejected although a clearly indicated base bid shall be considered for award as though it were the only bid submitted by the bidder.

101. ACCEPTANCE OR REJECTION OF BIDS. Prior to the issuance of a purchase order or contract, the Administrator shall have the right to accept or reject all or any part of a bid or any and all bids when:

- 01. it is in the best interests of the state of Idaho;
- 02. the bid does not meet the minimum bid specifications;
- 03. the bid is not the lowest responsible bid;
- 04. a finding is made based upon available evidence that a bidder is not responsible or otherwise capable of currently meeting specifications or assurance of ability to fulfill contract performance; or
- 05. the item offered deviates to a major degree from the bid specifications, as determined by the Administrator (minor deviations, as determined by the Administrator, may be accepted as substantially meeting the bid requirements of the state of Idaho). Deviations will be considered major when such deviations appear to frustrate the competitive bidding process or provides a bidder an unfair advantage.

102. CANCELLATION OF INVITATION TO BID OR REJECTION OF ALL BIDS. Prior to the issuance of a purchase order or contract, the Purchasing Activity reserves the right to reject all bids or to cancel an Invitation to Bid. In the event of a cancellation of an Invitation to Bid or in the event all bids are rejected, all bidders will be notified by mail. Examples of reasons for cancellation of an Invitation to Bid or rejection of all bids are:

- 01. Inadequate or ambiguous specifications;
- 02. Specifications have been revised;

- 03. Property or services being purchased are no longer required;
 - 04. Change in agency requirements;
 - 05. All bids are deemed unreasonable or sufficient funds are not available;
 - 06. Bids were not independently arrived at, or were submitted in bad faith;
 - 07. A determination is made that all the necessary requirements of the bid process have not been met;
 - 08. Insufficient competition;
 - 09. For reasons which indicate that cancellation or rejection of all bids is clearly in the best interest of the state.
103. --- 105. (RESERVED)
106. **IN STATE PREFERENCES.** In accordance with Idaho Code Sections 67-2349, 67-5718, 60-101 and 60-103, the Administrator shall compile a list of each state, relating to state purchasing, which statutes or regulations the Administrator believes grant a preference to vendors domiciled within that state. This list shall be updated on a periodic basis. The list shall include only those states with currently active in-state preference provisions for acquiring property and services and shall contain the percentage of preference allowed. States with only reciprocity legislation will not be included on the list. The Division will be responsible for the official compilation of the list and notification to impacted state agency, college and university purchasing offices.
- 01. Domicile of Bidder. For the purposes of determining whether to assess a percentage penalty against a bidder's bid, and the amount of that penalty, the buyer in charge of the bid will consider only the address of domicile stated in the bid proposal document.
 - 02. Penalty Application Procedure. Buyers will add the appropriate percentage penalty to each bid bearing the address from a state with in-state preference rather than subtracting a like amount from Idaho domiciled bidders.
 - 03. Bid Analysis Procedure. The action of adding a percentage penalty will be used only for bid analysis and award purposes. In no instance shall the increase be paid to a bidder whose bid is accepted.
107. **PARTIAL AWARD.** A buyer shall have the discretion to award on an "all or nothing" basis or to accept any portion of the items bid, excluding others unless the bidder stipulates all or nothing on their bid.
108. **TIE BIDS.** The following provisions shall apply to tie bids as defined herein:
- 01. Definition. Tie bids are low responsive bids from responsible bidders that are identical in price or score.
 - 02. Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the buyer, award shall be made in any permissible manner that will discourage tie bids. Procedures which may be used to discourage tie bids include:

- a. if price is considered excessive or for other reason such bids are unsatisfactory, reject all bids, rebid and seek a more favorable contract in the open market;
- b. award to Idaho resident or Idaho domiciled bidder or for an Idaho produced product where other tie bid(s) are from out of state or to a bidder submitting a domestic product where other tie bid is for foreign (external to Idaho) manufactured or supplied property;
- c. where identical low bids include the cost of delivery, award the contract to the bidder farthest from the point of delivery;
- d. award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical;
- e. award to the identical bidder with the earliest delivery date.

03. If no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots or tossing a coin in the presence of witnesses if only two tie bids.

04. Record. Records shall be made of all Invitations to Bid on which tie bids are received showing at least the following information:

- a. the Invitation to Bid identification number;
- b. the property to be acquired;
- c. all the bidders and the prices submitted; and
- d. procedure for resolving tie bids.

109. STANDARD NOTICE FOR AWARD. A standard notice of contract award, or in the case of a single acquisition, a purchase order or field purchase order, will normally be mailed to the successful bidder.

110. NOTICE OF REJECTION. No rejection notice need be sent to unsuccessful bidders (including potentially non-responsive bidders) submitting higher bid pricing than the awarded low bidder. Bidders whose bids are rejected as non-responsive will be notified in writing of the reasons for such rejection.

111. --- 115. (RESERVED)

116. ACCEPTANCE OF TERMS. Acceptance of bids shall be expressly limited to the terms and conditions of the Invitation to Bid issued by the Purchasing Activity. All material alterations, additional or different terms proposed by the bidder shall be and are rejected unless otherwise provided for in writing by the Administrator or designee.

10.7 Idaho Statutes Pertaining to Printing

60-101. CONTRACTS FOR STATE PRINTING -- EXECUTION WITHIN STATE --

EXCEPTION. All printing, binding (excluding binding for state supported libraries), engraving and stationery work executed for or on behalf of the state, and for which the state contracts, or becomes in any way responsible, shall be executed within the state of Idaho, except as provided in section 60-103, Idaho Code. Provided, however, that this section shall not apply to any compilation, publication or codification of the laws of the state of Idaho.

60-103. EXCEPTION IN CASE OF EXCESSIVE CHARGE -- EXCEPTIONS FOR LACK OF PRODUCTION FACILITIES ON BIDS ON STATE WORK. (a) Whenever it shall be established that any

charge for printing, engraving, binding (excluding binding for state supported libraries) or stationery work is in excess of the charge usually made to private individuals for the same kind and quality of work, then the state or county officer or officers having such work in charge shall have power to have such work done outside of said county or state, but nothing in this chapter shall be construed to oblige any of said officers to accept any unsatisfactory work. (b) Any work referred to in section 60-101, Idaho Code, and which is to be executed for or on behalf of the state may be executed outside of this state in any case (1) where the execution of such work shall require the use of a technique or process which cannot be performed through the use of physical production facilities located within this state and the use of such technique or process is essential to a necessary function to be served by the printing, binding, engraving or stationery work required; (2) where, after requests for proposals or bids have been made or notice thereof has been given as required by section 67-5718, Idaho Code, as amended, no bid or proposal is made thereon by any person, firm or corporation proposing to execute such work within this state, or (3) where, after requests for proposals or bids have been made or notice thereof given as required by section 67-5718, Idaho Code, the lowest bid from a person, firm or corporation proposing to execute such work within this state is more than ten percent (10%) more than the lowest bid from a person, firm or corporation proposing to execute such work outside this state.

10.8 Idaho Statute Pertaining to Idaho Preference Law

67-2349. PREFERENCE FOR IDAHO SUPPLIERS FOR PURCHASES. To the extent permitted by federal laws and regulations, whenever the state of Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract for purchase of any materials, supplies or equipment, the bidder domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible bidder domiciled in Idaho as would be required for such an Idaho domiciled bidder to succeed over the bidder domiciled outside Idaho on a like contract being let in his domiciliary state. For the purposes of this section, any bidder domiciled outside the boundaries of the state of Idaho may be considered as an Idaho domiciled bidder, provided that there exists for a period of one (1) year preceding the date of the bid a significant Idaho economic presence as defined herein. A significant economic presence shall consist of the following: (a) That the bidder maintain in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and (b) If a corporation be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

11. CONTRACTS, PRICE AGREEMENTS, LEASES

11.1 Definition

A contract is merely a written agreement for the acquisition of property or services that defines the relationship and duties and obligations of the parties to it. Most commonly the term is used to describe term contracts, definite or indefinite quantity/indefinite delivery contracts, or other acquisition agreements whose subject matter involves multiple payments and deliveries. Contracts include a description of the item or service solicited, terms and conditions, amendments, the vendor's signed bid or proposal and the signed document by the purchasing official indicating acceptance.

11.2 Types of Contracts

The Division of Purchasing develops, bids, and awards statewide contracts, single agency contracts, lease contracts and price agreements.

Agencies may create their own contracts with the following conditions:

- Purchase of Supplies: the contract may not exceed one (1) year in length and the total expected cost is within the agency's delegated purchasing authority.
- Lease: must not exceed one (1) year in length and exceed \$1,000 per month.
- Professional and Consultant Services: Must not exceed one (1) year and exceed \$25,000.
- Other Services: must not exceed one (1) year in length and the total cost must not exceed the agency's delegated authority.

11.3 Statewide Contracts

Statewide or Open Contracts are items or services that are universally used by the majority of state agencies. They include such items as paper and plastics (hand towels, toilet tissue, plastic trash can liners), car batteries, office supplies, envelopes, business cards, tires, paint, photocopiers, vehicles and information technology (computers, telephones). A complete list of statewide contracts is available on the internet at the Idaho Purchasing Homepage web site.

How does the Division of Purchasing determine what goes on a statewide contract? There are four major considerations:

- Is it a product or service used by all or most state agencies?
- Is the product or service universally available and biddable?
- Will the combining of usage figures from all agencies on a contract result in savings to the state?
- Is there a method for delivery or distribution available statewide?

Most statewide contracts are *mandatory use* meaning that they must be used by agencies purchasing the specific product or service. *Idaho Code 67-5726 Prohibitions* says, in part: "No officer or employee shall fail to utilize an open contract without justifiable cause for such action." Some statewide contracts are optional use and others have conditions such as delivery areas and minimum quantities that enable the agency to decline participation in the contract. Most statewide contracts also have a public agency clause that allows cities and political subdivisions of the state (school districts, counties, highway districts, etc.) to access the contract.

11.4 Single Agency Contracts

These types of contracts are generally for the exclusive use of an individual agency, although they may also have a public agency clause. Specifications for single agency contracts are developed by the agency and reviewed by the Division of Purchasing.

11.5 Price Agreements

A price agreement is another method of contracting with a vendor for products or services authorized by the Division of Purchasing. Price agreements are non-exclusive (not mandatory use) written agreements between a vendor and an individual agency or group of agencies specifying a product or list of products or services offered at an agreed upon price or discount. They are not competitively bid. Such agreements are appropriate when:

- The dollar amount of items or transactions are relatively small;
- The property may not be conducive to standard competitive bidding procedures;
- There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function, but is represented by different manufacturers and/or needed in multiple locations; and
- Non-exclusive agreements for periods not exceeding two years are deemed necessary to establish consistent general business terms such as price, use of catalogs, delivery terms, credit terms, etc.

Examples of price agreements are auto parts for the Department of Transportation, aircraft rental for the Department of Fish and Game and personal clothing and small household items for Department of Health and Welfare state hospital clients. The Division of Purchasing also establishes price agreements for use by all agencies such as auto rentals and court reporters.

11.6 Leases

A lease is a contract for the use of property under which title to the property does not pass to the state agency and the time period is one year or more. Individual agencies may enter into leases provided that the lease cost is less than \$1,000 per month and for a period less than one year. All leases exceeding one year or costing more than \$1,000 per month are required to be processed by the Division of Purchasing.

The Division of Purchasing currently has *mandatory* statewide lease contracts for photocopiers, facsimile machines and vehicles.

11.7 Lease with Purchase Option

A purchase option in a lease may be exercised only after compliance with the Idaho Code purchasing statutes, unless the requirement can be met only by the property being leased as determined in writing by the buyer. Before exercising such an option, the buyer shall:

- investigate alternative means of acquiring comparable property; and
- compare estimated costs and benefits associated with the alternative means and the exercise of the option; for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option; and
- provide notice and advertisement of the exercise of option in accordance with these rules pertaining to sole source or competitively bid the property by soliciting bids for new or used property.

11.8 Time Purchase Contracts

Time Purchase or Installment Payments Contracts may be entered into by the Division of Purchasing with the following rules:

IDAPA 38.05.01

224. INSTALLMENT PAYMENT OR TIME PURCHASE CONTRACTS.

01. Use. A contract may be entered into which extends beyond the current fiscal period provided any obligation for payment in a succeeding fiscal period is subject to the appropriation and/or availability of funds therefor.

02. Termination. An installment or time purchase contract may be terminated without cost to the agency by reason of unavailability of funds for the purpose, or for lack of performance by the contractor. Termination for other reason or reasons shall be as provided by the contract or by law.

03. Installment Payments. Time purchase contracts may provide for installment purchase payments or time purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints. Using agencies shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary or other required prior approvals are obtained. Documentation or other evidence of any required approvals shall accompany the requisition submitted to the Division. No such agreement shall be used unless provision for installment payments is included in the solicitation document.

04. Lack of Fund Contract Language Required. A contract providing for installment payments shall include appropriate language stating the agency is not obligated to make any payments beyond the term of any particular appropriation of state or federal funds which may exist from time to time. The contract shall be terminated without any penalty of whatsoever nature or kind or future liability and the property shall be returned to the contractor.

11.9 Service Contracts

With the exception of Information Technology Services and Professional and Consultant Services, procurement of service contracts fall under the same purchasing rules and dollar threshold bidding requirements as Invitation To Bids and Request For Proposals.

Agencies may enter into service contracts provided that they do not exceed one (1) year in length and the total cost does not exceed the agencies delegated authority.

11.10 Division of Purchasing Rules Pertaining to Contracts

IDAPA 38.05.01

120. VIOLATION OF CONTRACT TERMS.

01. If a contractor fails to deliver, or deliver on time, or there is discrepancy in the quality and/or quantity of services or property received, or there is a default in any other contract provision on a state contract or purchase order, the agency shall promptly notify the contractor in writing. In the event of an unsatisfactory response from the contractor, the agency shall file a fully documented complaint with the Division.

02. The Division shall verify the complaint, note the same in the contract file and take appropriate action. Where a complaint is justified, the contractor shall be notified that an unsatisfactory condition exists and that the unsatisfactory condition must be cured within a stated time. If the condition is not timely cured, the Division shall have the discretion to do any or all of the following:

- a. to remove the contractor from the relevant registered vendor list;
- b. demand performance of the contract;
- c. modify or cancel the contract and purchase elsewhere; and
- d. pursue any other legal remedies available.

121. OFFSET AGAINST CONTRACTOR PAYMENTS. In addition to other methods of collection available, the Purchasing Activity may offset any damages for which the contractor is responsible against payments owing to the contractor from any agency which may be indebted to the contractor.

122. --- 124. (RESERVED)

125. DELIVERY DATE. Whenever a specific delivery date has been stated, that date shall be an essential condition of the contract. If a contractor is unable to meet the delivery date, the contractor shall notify the buyer at the earliest possible time. The contractor shall include in such notification the projected revised delivery date. The buyer shall then have the option to accept such revised dates, or cancel the contract and purchase elsewhere without waiving the state's claim for damages.

126. PRICE ESCALATION. Contractors shall not be entitled to price escalation except where specifically provided for in writing in the contract or purchase order.

127. CHANGE IN PROPERTY OFFERED. A contractor shall not be allowed to substitute property and services from that offered: *Provided*, however, if the property or services offered are no longer available to the bidder or contractor for reasons beyond its control, the buyer may consider a request by the bidder or contractor for substitution. All such requests must be in writing, must set forth the reasons the product or service is no longer available, and must be accompanied by samples, record of performance, certified copies of tests by impartial and recognized laboratories, and such additional data as the buyer may request. Samples and data shall be furnished sufficiently in advance to allow for investigation before a decision is made. The contractor shall warrant that the contracted article is equal or better in quality than the specified article. If the change results in any cost savings to the contractor, the cost savings shall be reflected in full in a reduction in price to the using agency. State contracts (or relevant release orders) or purchase orders may only be so amended by the Division.

128. EXTENSION OR RENEWAL OF CONTRACTS.

01. If contract provisions allow, a contractor and the Purchasing Activity may covenant and agree that the contract in question may be extended for predetermined periods by the Purchasing Activity under the same terms and conditions as comprise the original contract.

02. The buyer shall have discretion to extend a contract with the justification for extension being documented. The buyer should attempt to ascertain whether a new competitive acquisition is practical, in terms of pertinent competitive and costs factors, and would be more advantageous to the agency than extension of the existing contract. The contractor shall be notified in writing of the intent to extend prior to the termination date of the existing or extended contract. If the contractor does not wish to have the contract extended, the contractor shall so notify the Purchasing Activity in writing. Extensions, to be effective, must be in writing and signed by authorized representatives of both the contractor and Purchasing Activity.

129. ADDITIONS OR DELETIONS TO THE CONTRACT. Within reason, the Division may increase or decrease the items, quantities, or locations specified in a state or statewide contract or purchase order.

222. PRICE AGREEMENTS.

01. Use. In addition to other methods of contracting, the Administrator may authorize the establishment with vendors of price agreements. Such agreements are appropriate when:

- a. The dollar value of items or transactions are relatively small;
- b. The property may not be conducive to standard competitive bidding procedures, such as automobile, truck, or other equipment parts having individual low unit costs;
- c. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers and/or needed in multiple locations; and
- d. Non-exclusive agreements for periods not exceeding two years are deemed necessary to establish consistent general business terms such as price, use of catalogs, delivery terms, credit terms, etc.

02. Establishment. Any price agreements shall be established and approved by the Division.

03. Termination. Price agreements shall provide for termination for any reason upon not more than thirty (30) days written notice.

223. LEASES.

01. Use. A lease for personal property may be entered into provided:

- a. it is in the best interest of the agency;
- b. all conditions for renewal and costs of termination are set forth in the lease; and
- c. the lease is not used to avoid a competitive bid situation.

02. Lack of Fund Contract Language Required. A contract providing for lease payments shall include appropriate language stating the agency is not obligated to make any payments beyond the term of any particular appropriation of state or federal funds which may exist from time to time. The contract shall be terminated without any penalty of whatsoever nature or kind or future liability.

03. Competition. Lease contracts are subject to the same requirements of competition which govern the purchase of property, if the lease exceeds the amount established by Section 67-5718, Idaho Code. Leases for periods exceeding one (1) year specifically require the approval of the Division.

04. Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding or competitive proposals, unless the requirement can be met only by the property being leased as determined in writing by the buyer. Before exercising such an option, the buyer shall:

- a. investigate alternative means of acquiring comparable property; and
- b. compare estimated costs and benefits associated with the alternative means and the exercise of the option; for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option; and
- c. provide notice and advertisement of the exercise of option in accordance with these rules pertaining to sole source or competitively bid the property by soliciting bids for new or used property.

224. INSTALLMENT PAYMENT OR TIME PURCHASE CONTRACTS.

01. Use. A contract may be entered into which extends beyond the current fiscal period provided any obligation for payment in a succeeding fiscal period is subject to the appropriation and/or availability of funds therefor.

02. Termination. An installment or time purchase contract may be terminated without cost to the agency by reason of non-availability of funds for the purpose, or for lack of performance by the contractor. Termination for other reason or reasons shall be as provided by the contract or by law.

03. Installment Payments. Time purchase contracts may provide for installment purchase payments or time purchase payments, including interest charges, over a period of time.

Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints. Using agencies shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary or other required prior approvals are obtained. Documentation or other evidence of any required approvals shall accompany the requisition submitted to the Division. No such agreement shall be used unless provision for installment payments is included in the solicitation document.

04. Lack of Fund Contract Language Required. A contract providing for installment payments shall include appropriate language stating the agency is not obligated to make any payments beyond the term of any particular appropriation of state or federal funds which may exist from time to time. The contract shall be terminated without any penalty of whatsoever nature or kind or future liability and the property shall be returned to the contractor.

12. PROFESSIONAL AND CONSULTANT SERVICES

12.1 Definitions

Consultant Services: work, rendered by either independent individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advise in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting, planning and data processing. The consultant's services, opinions, or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work.

Professional Services: work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarians, and research. The knowledge is founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills.

12.2 Methods

12.2.1 Services Costing Less Than \$25,000

Services of professionals or consultants costing less than \$25,000 may be acquired by agencies without competitive bidding in accordance with good business practice and in the best interests of the state.

12.2.2 Services Costing More Than \$25,000

Services of professionals or consultants costing exceeding \$25,000 must be sent to the Division of Purchasing and are normally processed as Request For Proposals.

12.3 Division of Purchasing Rules Regarding Professional and Consultant Services

IDAPA 38.05.01

188. SMALL PURCHASES OF SERVICES OF PROFESSIONALS AND CONSULTANTS. If it is expected that the services of professionals and consultants can be acquired for less than \$25,000, the services may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state.

13. REPAIR SERVICES

13.1 Methods - Real Property

13.1.1 Repair of Real Property Costing Less Than \$2,500

Repairs to equipment that are part of *real property* (fixtures) costing less than \$2,500 and the labor or repairs are not performed by the state by be acquired without competitive bidding.

13.1.2 Repair of Real Property Costing More Than \$2,500

Repairs exceeding \$2,500 are subject to the competitive process or emergency purchasing process (67-5711B or 67-5711C).

13.2 Methods - Equipment

13.2.1 Repair of Equipment Costing Less Than \$5,000

Unscheduled repairs to equipment (vehicles, HVAC, etc.) where the cost cannot be ascertainable until the equipment is disassembled and the cost is less than \$5,000, no competitive bids are required.

13.2.2 Repair of Equipment Costing More Than \$5,000

Repairs exceeding \$5,000 are subject to the competitive process or emergency purchasing process (67-5711B or 67-5711C).

13.3 Division of Purchasing Rules Regarding Repair Services

IDAPA 38.05.01

189. SMALL PURCHASES OF REPAIR SERVICES. This rule applies to unscheduled repairs to equipment (such as but not limited to vehicles, scientific instruments, broadcasting equipment, or heating and cooling (HVAC) equipment with labor and/or installation of repair parts [for HVAC equipment] being performed by state personnel) *where the total cost may not be ascertainable until the equipment is disassembled, the equipment cannot be reasonably moved or transported due to its being disabled*, or the unscheduled repairs may require original equipment manufacturer (OEM) parts. If the estimated cost of the unscheduled repair is less than \$5,000, the agency may acquire the necessary property as the agency best sees fit in accordance with good business practice and in the best interest of the state. If the repairs are to items of equipment that are incorporated into or affixed to real property (fixtures) and the labor or repairs *are not performed* by state personnel, and the cost exceeds \$2,500, the agency must comply with the provisions of Idaho Code Section 67-5711B (if an emergency) or Idaho Code Section 67-5711C.

14. EMERGENCY PURCHASES

14.1 Definition

Idaho Code 67-5720 and IDAPA 38.05.01 defines an emergency as: "An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other similar circumstances as may be determined by the Director, Administrator or designee. The existence of such condition must create an immediate and serious need for supplies, property, or services, that cannot be met through normal acquisition methods. An emergency declaration shall also include a finding as to whether a particular savings to the state may be had through use of educational discounts, sole source purchases, or other circumstances as approved by the Director or designee."

14.2 Methods

To request an emergency purchase, the agency submits a written request to the Division of Purchasing stating the nature of the emergency, the product or service required and the basis for the selection, and the supplier. The Division of Purchasing will review the request, determine if an emergency exists, and make an appropriate emergency purchases.

Some agencies have delegated emergency purchasing authority with a dollar threshold.

The Division of Purchasing, after determining that an emergency exists, may authorize the purchase of property or services by any reasonable means, with any available specification, without regard to the provisions of these rules.

In extreme emergency, agency personnel may take whatever purchasing action necessary to resolve the emergency, to be followed by a written explanation and summary of the action taken to the Division of Purchasing.

14.3 Division of Purchasing Rules Regarding Emergencies

IDAPA 38.05.01

201. DEFINITION OF EMERGENCY CONDITIONS. An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other similar circumstances as may be determined by the Director, Administrator or designee. The existence of such condition must create an immediate and serious need for supplies, property, or services, that cannot be met through normal acquisition methods. An emergency declaration shall also include a finding as to whether a particular savings to the state may be had through use of educational discounts, sole source purchases, or other circumstances as approved by the Director or designee.
202. SCOPE OF EMERGENCY PURCHASES. Emergency purchases shall be limited to only those supplies, services, or property necessary to meet the emergency. Any payments made for emergency purchases must state upon their faces the justification for the purchase.

203. **AUTHORITY TO MAKE EMERGENCY PURCHASES.** The Director or Administrator may delegate authority in writing to an agency or Purchasing Activity to make emergency purchases of up to an amount set forth in the delegation of authority.

204. **SOURCE SELECTION METHODS.**

01. General. The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or property are purchased in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

02. After Unsuccessful Competitive Sealed Bidding. If emergency conditions exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency purchase may be made. Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation to Bid are unreasonable, noncompetitive, no bids are received, or when the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids, or when the entity awarded the bid is unable to perform the contract and the criterion for emergency purchase is satisfied by the circumstances.

205. **DETERMINATION OF EMERGENCY PURCHASE.** The buyer or the agency official responsible for purchasing shall make a written determination stating the basis for an emergency purchase and for the selection, if applicable, of the particular supplier. Such determination shall be sent promptly to the Administrator for review and written approval that the purchase be undertaken as an emergency purchase.

15. SOLE SOURCE

15.1 Definition

A sole source item is described as an item with *only a single supplier*. Many times agencies send requests for sole source purchases that describe an item made only by one manufacturer, however the item is distributed and readily available from many different suppliers. So it does not qualify for sole source. It has a sole manufacturer, but not a sole supplier. As long as there is more than one potential bidder or offeror for the property item than there is no justification for a sole source determination.

Examples of circumstances which could necessitate a sole source purchase are:

- Property is required for a life-threatening situation or a situation immediately detrimental to the public welfare or property;
- Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration;
- Where a sole supplier's item is needed for trial use or testing;
- Purchase of mass produced movie or video film or written publications distributed or sold primarily by the publisher;
- Purchase of property for which it is determined there is no functional equivalent;
- Purchase of public utility service.

15.2 Methods

Sole source items are exempt from the formal bidding process. All requests for sole source must be submitted in writing to the Division of Purchasing with justification for such action. The Division of Purchasing shall determine the validity of sole source purchase requests. In cases of reasonable doubt, competition is solicited in accordance with normal Division of Purchasing Rules.

Unless the property is required for a life-threatening situation, a situation that is immediately detrimental to the public welfare or property, or if the proposed acquisition amount exceeds the sealed bid limitation, the Administrator shall publish notice in a public, publication statewide of the sole source acquisition at least ten (10) working days prior to the award of the contract

15.3 Division of Purchasing Rules Regarding Sole Source

IDAPA 38.05.01

195. CONDITIONS FOR USE OF SOLE SOURCE PURCHASES.

01. Only a Single Supplier. Sole source purchase shall be used only if a requirement is reasonably available from a single supplier. A requirement for a particular proprietary property

item does not justify a sole source purchase if there is more than one potential bidder or offeror for that property item.

02. Examples of Sole Source. Examples of circumstances which could necessitate a sole source purchase are:

- a. property is required for a life-threatening situation or a situation is immediately detrimental to the public welfare or property;
- b. where the compatibility of equipment, components, accessories, computer software, replacement parts, or service is the paramount consideration;
- c. where a sole supplier's item is needed for trial use or testing;
- d. purchase of mass produced movie or video films or written publications distributed or sold primarily by the publisher;
- e. purchase of property for which it is determined there is no functional equivalent;
- f. purchase of public utility services;

03. Administrator Makes Determination. The determination as to whether an acquisition shall be made as a sole source shall be made by the Administrator. Each request shall be submitted in writing by the using agency. The Administrator may specify the application of such determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that an acquisition be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

04. Appeal. The appeal of a sole source determination may be made in accordance with applicable law.

196. **NEGOTIATION IN SOLE SOURCE PURCHASE.** The buyer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

197. **NOTICE OF SOLE SOURCE PURCHASE.** Unless the property is required for a life-threatening situation, a situation that is immediately detrimental to the public welfare or property, or if the proposed acquisition amount exceeds the sealed bid limitation, the Administrator shall publish notice in a public, publication statewide of the sole source acquisition at least ten (10) working days prior to the award of the contract.

16. FOOD SERVICES AND CONCESSIONS

16.1 Definition

Food Service is defined as restaurants, cafeterias, snack bars, and goods and services customarily offered in connection with any of the foregoing. It also includes vending machines dispensing foods when operated independently or in conjunction with facilities in or under the control of a governmental agency.

16.2 Methods

Food Services or other concessions do not require competitive solicitations except as noted below and may be acquired by the agency as it determines to be in its best interest. Agencies are encouraged to use competitive solicitations whenever possible.

16.2.1 Food Services

For acquisition of food services, *Idaho Codes 67-6902, 67-6903, 67-6904* state that in public buildings, agencies must attempt to notify nonprofit organizations and seek proposals if more than one provider responds for food services. Proposals from the Idaho Commission for the Blind and Visually Impaired have priority over all other proposals. Nonprofit organizations for the handicapped have second priority over other proposals. If no nonprofit organization is willing or able to provide satisfactory food services, the agency may accept proposals from for-profit vendors.

16.2.2 Exemptions

Idaho Code 67-6902 exempts public schools or buildings or institutions of higher education or vocational-technical training, buildings of the Department of Health and Welfare, or facilities of the State Board of Correction from the above requirements.

16.3 Idaho Statutes Regarding Food Services

67-6902. DEFINITIONS. As used in this chapter:

(1) "Public buildings" means the state capitol, all county courthouses, and all city halls and buildings used primarily as governmental offices of the state or any county or city. It does not include public schools or buildings or institutions of higher education or vocational-technical training, buildings of the department of health and welfare, or facilities of the state board of correction.

(2) "Food service facilities" include restaurants, cafeterias, snack bars, and goods and services customarily offered in connection with any of the foregoing, and also includes vending machines dispensing foods when operated independently or in conjunction with such facilities.

(3) "Handicapped" means:

(a) A person who has a physical or mental impairment which substantially limits one or more major life activities (e.g. communication, ambulation, self-care, socialization, education, vocational training, transportation or employment);

(b) A person who has a record of such an impairment and the impairment is expected to continue indefinitely;

(c) A person who is regarded or treated by others as having such an impairment;

(d) Persons including, but not limited to, persons who are blind, deaf, epileptic, autistic, mentally retarded or mentally ill or who have orthopedic disorders or cerebral palsy.

(4) "Nonprofit organization representing the handicapped" means tax exempt organizations as defined under section 501(c)(3) of the internal revenue code and includes the Idaho commission for the blind and visually impaired.

67-6903. FOOD SERVICE FACILITIES IN PUBLIC BUILDINGS. Any governmental agency which proposes to allow, to operate or to continue a food service facility in a public building shall first attempt, in good faith, to notify nonprofit organizations representing handicapped persons of the opportunity to operate a food service. If more than one (1) organization responds, the governmental agency shall establish reasonable criteria and shall select on the basis of that criteria from the proposals submitted. Criteria adopted by a governmental agency pursuant to this section, and used as a basis for selection among proposals submitted, shall include the requirement that proposals submitted by the Idaho commission for the blind and visually impaired shall have priority over all other proposals submitted. Proposals submitted by nonprofit organizations representing the handicapped, other than the Idaho commission for the blind and visually impaired, shall receive priority over all other proposals except proposals submitted by the Idaho commission for the blind and visually impaired. A food service facility shall be operated without payment of rent. The governmental agency shall not offer or grant any other party a contract or concession to operate such food service facility unless the governmental agency determines in good faith that no nonprofit organization representing handicapped persons is willing or able to provide satisfactory food service.

67-6904. OTHER FOOD SERVICE. Buildings or institutions of the department of health and welfare, not defined as public buildings for purposes of this chapter, shall nevertheless be subject to the provisions of section 67-6903, Idaho Code, for the purposes of providing services of vending machines dispensing food.

16.4 Division of Purchasing Rules Regarding Concession Services

IDAPA 38.05.01

191. ACQUISITION OF CONCESSION SERVICES. If there is no expenditure of State funds, the acquisition of concession services including, but not limited to, exclusive-rights contracts, franchises, vending services, options, pouring contracts, service agreements, advertising agreements, broadcast rights to sporting events or other similar types of goods, may be undertaken by each Purchasing Activity as it determines to be in its best interest. While there is no statutory requirement for competitive bidding for concession services or the applicability of purchasing statutes to the award of contracts for concession services, the Purchasing Activity is encouraged to utilize a competitive process if determined to be in its best interest.

17. REHABILITATION FACILITIES & CORRECTIONAL INDUSTRIES

Purchases from nonprofit corporations and public agencies operating rehabilitation facilities for the handicapped or disadvantaged are exempt from competitive solicitation rules.

Purchases of property marketed by Correctional Industries are exempt from competitive solicitation rules.

17.1 Division of Purchasing Rules Regarding Rehabilitation Facilities and Correctional Industries

IDAPA 38.05.01

051. EXCEPTIONS TO FORMAL SEALED BID PROCEDURE. Purchases meeting the following criteria need not be purchased by formal sealed bid:

05. Rehabilitation Agency Acquisitions. Acquisitions of property which are provided by non-profit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and which are offered for sale at fair market price as determined by the Administrator in accordance with these rules; or

06. Correctional Industries. Purchases of road or street signs, metal motor license plates, wearing apparel, furniture, articles, containers for state use not for resale on the open market or any other property marketed directly by Correctional Industries. See Idaho Code Section 20-245.

17.2 Idaho Statute Regarding Rehabilitation Facilities

67-2319. PURCHASING PRODUCTS OF REHABILITATION FACILITIES. Products which are manufactured by and services which are provided for nonprofit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and offered for sale at the fair market price as determined by the administrator of the division of purchasing which meet the specific requirement for such products may be procured by the state agencies or departments or any political subdivision of the state from such nonprofit corporations or public agencies without advertising or calling for bids.

17.3 Idaho Statute Regarding Correctional Industries

20-245. CONVICT LABOR ON STATE PROJECTS WITHIN OR OUTSIDE OF PENITENTIARY -- SALE OF PRODUCTS. The state board of correction shall have the authority to use, under such rules and regulations as they may prescribe, the labor of convicts either within or without the walls of the penitentiary and on all public works done under the direct control of the state; that convict labor under control of the state board of correction shall manufacture and repair state highway signs, except for highways and projects where Federal regulations would prohibit the use of signs so manufactured; provided, that so far as practicable any manufacture conducted within the walls shall be in connection with metal motor license plates, road or street signs furnished by the state or used by its municipalities, wearing apparel, articles, containers, for state use in the various departments or institutions of the state

not for sale upon the open market. When any product produced by the convict shall be used by any department or other institution of the state, the current appropriation shall receive from such department or institution such reimbursement therefor as may be fixed by the state board of correction with the approval of the state board of examiners.

18. EXCEPTIONS TO BIDDING

18.1 List of Exceptions

Purchases from the following sources exempt from the requirement for competitive solicitations:

- Sole Sources
- The Federal Government
- Rehabilitation Agencies
- Correctional Industries
- GSA Federal Supply Contractors (not available at this time, federal legislation still pending)
- Emergency Purchases
- Purchases less than the bid limits described in this guide
- Statewide or Single Agency Contracts
- Certain exempt purchases determined by the Division of Purchasing
- Training Travel, Lodging, Seminars, and Meeting Rooms less than \$25,000

The Division of Purchasing reserves the authority to determine if an item or services meets the qualifications to be considered as exempt from bidding.

18.2 Division of Purchasing Rules Regarding Exceptions to Bidding

IDAPA 38.05.01

051. EXCEPTIONS TO FORMAL SEALED BID PROCEDURE. Purchases meeting the following criteria need not be purchased by formal sealed bid:

01. Emergency Purchases. Emergency purchases as authorized by Idaho Code Section 67-5720 and these rules;
02. Purchases Less Than Bid Limits. Purchases not exceeding the sealed bid limit unless the Administrator specifically requires a formal sealed bid;
03. Sole Source Purchases. Single source, special facilities, services, or market conditions. Purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions may be acquired through direct solicitation with documented source selection, as authorized by Idaho Code Section 67-5720 and these rules;

04. Federal Government Acquisitions. Acquisitions from the United States of America or any agency thereof;

05. Rehabilitation Agency Acquisitions. Acquisitions of property which are provided by non-profit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and which are offered for sale at fair market price as determined by the Administrator in accordance with these rules; or

06. Correctional Industries. Purchases of road or street signs, metal motor license plates, wearing apparel, furniture, articles, containers for state use not for resale on the open market or any other property marketed directly by Correctional Industries. See Idaho Code Section 20-245.

07. Purchases from GSA Federal Supply Contractors. Acquisitions of property may be made from GSA federal supply contractors without the use of competitive bid. The Administrator shall determine whether such property meets the purchasing activity's requirements and whether the price of acquisition is advantageous to the state. The Administrator shall commemorate the determination in a written statement, which shall be incorporated in the applicable file. If the Administrator determines that the acquisition of property from GSA contractors is not advantageous to the state, the acquisition shall be in accordance with competitive bidding procedures and requirements.

08. Existing State or Statewide Contracts. Supplies, services, or other property available under these contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof.

09. Exempt Purchases. By written policy the administrator may exempt from formal sealed bidding or the requirement for competitive solicitation those items of property for which bidding is impractical, disadvantageous, or unreasonable under the circumstances. Examples include, but are not limited to, special market conditions, property requiring special contracting procedures due to uniqueness, legal advertising, publication or placement of advertisements by state agency personnel directly with media sources, or services for which competitive solicitation procedures are impractical. Such policy shall describe the property exempted, the duration of the exemption, and any other requirements or circumstances appropriate to the situation.

052. DETERMINATION OF FAIR MARKET PRICE FOR REHABILITATION AGENCY ACQUISITIONS. Upon receipt of a rehabilitation agency proposal accompanied by detailed cost data, the Administrator will conduct a survey of the market place by requesting current prices from at least three (3) vendors currently marketing the property being sought. The fair market price of a rehabilitation vendor shall not be greater than twenty-five per cent (25%) of the lowest price received during the survey. The Administrator will notify by letter the rehabilitation agency concerned advising it as to whether it is offering property at fair market price. The Division, or Purchasing Activity if the acquisition is less than the formal sealed bid amount and/or the contract is one year or less in duration, may then contract with the rehabilitation agency at the proposed price.

18.3 Division of Purchasing Policy Directives

POLICY DIRECTIVE NO. 96-1 **EFFECTIVE NOVEMBER 1, 1996**

Pursuant to Idaho Code 67-5718 and Division of Purchasing Rule 51.09 (IDAPA 38.05.01.51.9), a determination has been made that competitive solicitation procedures are impractical or reasonably impossible when applied to:

1. The infrequent purchases of less than \$25,000 for State employee education or training related travel (bus, car, plane, etc.) to include associated costs for lodging (hotel/motel rooms, food, etc.), meeting rooms, and seminar/workshop expenses.
2. The infrequent purchases of less than \$25,000 for services from firms or individuals providing on-site education and/or training to State employees.

The requirement for soliciting quotes pursuant to statute and rule for these requirements for purchases of less than \$25,000 is waived. Purchasers are cautioned to use prudent business judgment and/or informal price quotation procedures when possible or practical. The goal is to maximize the value of the benefit commensurate with the degree of effort, time available, and price reasonableness.

Normal bid requirements and compliance with statute and rules applies for those requirements subject to this Policy Directive exceeding \$25,000. Sufficient lead time for compliance with normal bid requirements should be allowed.

POLICY DIRECTIVE NO. 98-1 **EFFECTIVE APRIL 1, 1998**

Pursuant to Division of Purchasing Rule 51.09 (IDAPA 38.05.01.51.9), a determination has been made that competitive solicitation procedures are impractical, disadvantageous, and unreasonable when applied to:

The purchases of pharmaceutical products through CDC Consolidated Contracts established by the United States Government, Department of Health and Human Services, Center for Disease Control and Prevention, Procurement and Grants Office. Such products shall be limited to those provided through the CDC Consolidated Contracts, as may be updated from time to time, and as are listed by the CDC and are incorporated into this policy directive as Attachment 1, hereto attached.

The requirement for subjecting the above referenced products to the sealed bid process or competitive solicitation pursuant to statute and rule for these purchases is waived. Purchasers are cautioned to use prudent business judgment. The goal is to maximize the value of the benefit commensurate with the degree of effort, time available, and price reasonableness.

CDC Consolidated Contracts are established for use by qualified Public Health entities. The Public Health entity utilizing these contracts are bound by the terms and conditions of the contract as issued by the Center for Disease Control and Prevention.

This exemption shall be effective until this policy directive is rescinded. The directive will be reviewed annually to assure the conditions under which it was issued are still applicable.

19. INFORMATION TECHNOLOGY PURCHASING

19.1 Definition

Information Technology Property: includes, but is not limited to, all present and future forms of computer hardware, computer software, or services used or required for automated data processing, computer related office automation or telecommunications.

Telecommunications: means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images over a distance.

19.2 Information Technology Purchasing Officer

Because of the complexity of information technology purchasing, the Division of Purchasing has a Information Technology Purchasing Officer to assist agencies to ensure that the most expedient and cost-effective method of purchasing is deployed. The IT Purchasing Officer is available to help you develop specifications, create Request For Proposals, and in conjunction with the Information Technology Resource Management Council (ITRMC) project team, make purchasing recommendations.

19.3 Purchasing Methods & Rules for IT Property

19.3.1 IT Property Costing Less Than \$2,500

Information Technology property (defined as computer hardware, software, computer related office automation, automated data processing and telecommunications) not available on statewide contracts, costing less than \$2,500 may be acquired as each agency sees fit, in accordance with good business practice and in the best interests of the state.

19.3.2 IT Property Costing More Than \$2500 and Less Than \$25,000

Property costing more than \$2500 and less than \$25,000 (**or your delegated purchasing authority**) and not available on statewide contracts, requires, where practical, a minimum of three (3) competitive solicitations from registered vendors with a significant Idaho economic presence as defined by Idaho Code.

19.3.3 IT Property Costing More Than \$25,000 and Less Than \$200,000

Purchases of property costing over \$25,000 and less than \$200,000, not available on statewide contracts, require a minimum of ten (10) competitive bid solicitations from registered vendors. These are processed by the Division of Purchasing as formal, sealed Invitation To Bids or Request For Proposals.

19.3.4 IT Property Exceeding \$200,000

Purchases of property costing over \$200,000, not available on statewide contracts, require that all registered vendors in the applicable commodity code receive a bid solicitation or are offered an opportunity to bid in a pre-bid survey. These are also formal, sealed Invitation To Bids or Request For Proposals.

19.4 Purchasing Methods & Rules for IT Services

19.4.1 IT Services Exceeding One Year

Any service contract that exceeds one (1) year in length, *regardless of dollar amount*, is processed by the Division of Purchasing.

19.4.2 IT Services Costing Less Than \$25,000 and Less Than One Year

Information Technology services costing less than \$25,000 acquired through a service contract not to exceed one (1) year may be acquired as the agency sees fit, in accordance with good business practice and in the best interests of the state.

19.4.3 IT Services Costing More Than \$25,000 and Less Than \$200,000

IT Services costing over \$25,000 and less than \$200,000 require a minimum of ten (10) competitive bid solicitations from registered vendors. These are processed by the Division of Purchasing as formal, sealed Invitation To Bids or Request For Proposals.

19.4.4 IT Services Exceeding \$200,000

Purchases of services costing over \$200,000 require that all registered vendors in the applicable commodity code receive a bid solicitation or are offered an opportunity to bid in a pre-bid survey. These are also formal, sealed Invitation To Bids or Request For Proposals.

19.5 Leased or Rental of IT Property

19.5.1 Leased or Rental of IT Property Exceeding One Year

Any Lease or Rental Agreement that exceeds one (1) year in length, *regardless of dollar amount*, is processed by the Division of Purchasing.

19.5.2 Leased or Rental IT Property Costing Less Than \$1,000 per Month and Less Than \$2,500 Total and Less Than One Year

Leased or rented IT property costing less than \$1,000 per month totaling less than \$2,500, and the contract lasting less than one (1) year in duration with no renewal options may be acquired as each agency sees fit, in accordance with good business practice and in the best interests of the state.

19.5.3 Leased or Rental IT Property Costing Less Than \$1,000 per Month and More Than \$2,500 Total and Less Than One Year

Leased or rented IT property costing less than \$1,000 per month, totaling *over \$2,500 and up to the agency's delegated purchasing authority*, and the contract is less than one (1) year in duration requires, where practical, a minimum of three (3) competitive solicitations from registered vendors with a significant Idaho economic presence as defined by Idaho Code.

19.5.4 Leased or Rental IT Property Costing More Than \$1,000 Month

Contracts for leased or rented IT property exceeding \$1,000 a month and more than one (1) year in duration, are processed by the Division of Purchasing as formal, sealed bids. They require review and approval by ITRMC.

19.6 Microcomputer Contracts

Contracts for the purchase of microcomputer and associated peripherals have been established with CompUSA, Dell, Gateway, IBM, and Compaq through WSCA. Agency use of these contracts is optional, not mandatory. Contracts for Micron and Hewlett Packard are also available. They cover the following items:

- computers - desktop and notebooks/laptops
- printers
- monitors/adapters
- mass storage devices
- computer faxes/modems
- video cards
- sound boards/multi-media accessories
- scanners

- network hardware
- add-on memory
- operating system software
- accessories

For more information on ordering through the Western States Contracting Alliance (WSCA) computer contracts see Frequently Asked Questions in the Appendix section and go to the listing of statewide contracts on the Division of Purchasing web site.

19.7 Master License Agreements

The Division of Purchasing currently has Master Licensing Agreements (MLA's) in place for IBM Software Advantage for Workstations, Netscape Internet Browser, Microsoft Select Software Products, Attachmate Extra, Novell Software Products, Autodesk/Softdesk Software Products, and Corel Software Products. These MLA's allow agencies to purchase both operating system software licenses, application software licenses, and maintenance (upgrade insurance).

Some MLA's products are purchased direct from the software manufacturers, others are purchased from authorized resellers (principally CompUSA and Computerland of Boise at the present time). For more information on where to purchase licenses, see the statewide contract listing on the Idaho Purchasing Homepage web site or contact the Division of Purchasing.

19.8 ITRMC Review and Approval

What kinds of IT purchases need reviewed by ITRMC?

Large projects consisting of software and/or hardware solutions and small purchases that are an integral part of larger projects or significantly affect the operations of the requesting agency and it's interaction with other state agencies must be reviewed by ITRMC for conformance to established guidelines and policies of the State. Basic purchase or replacement of desktop hardware and operating software, not part of large projects, do not need to have ITRMC approval.

If in any doubt, contact either of the following persons for guidance:

ITRMC.Project.Team
332-1875
ITRMC@adm.state.id.us

Division of Purchasing
Mark Little, IT Purchasing Officer
327-7359
mlittle@adm.state.id.us

To understand the role and functions of ITRMC see their internet web site at:
<http://www2.state.id.us/itrmc/index.htm>

Division of Purchasing Rules 38.05.01.260 requires:

For property or services purchased, other than from existing state contracts, exceeding \$25,000 if purchased or \$1,000 per month if procured (lease or time payment), must be reviewed and approved by ITRMC (formerly called the Division of Information Technology) before submission to the Division of Purchasing. The acquisition must conform to the guidelines and policies established or adopted by the

Information Technology Resource Management Council (ITRMC) and have their approval. The submitting agency is responsible to subsequently attach any approvals to requisitions submitted to the Division of Purchasing.

19.9 Division of Purchasing Rules Regarding Information Technology

IDAPA 38.05.01

260. PURCHASE OF TELECOMMUNICATIONS OR INFORMATION TECHNOLOGY PROPERTY. Other than property purchased from existing state contracts, all agency requests exceeding the sealed bid limits of Section 67-5718 Idaho Code for telecommunications or information technology property must be reviewed and approved by the Division of Information Technology within the Department of Administration before submission to the Division. It is the requesting agency's responsibility to subsequently attach any approvals to any requisitions submitted to the Division for bidding action. Acquisitions of these types of property are subject to state bid requirements, so agencies should plan long enough in advance to allow for this review. The department's review and any subsequent acquisition will conform to the guidelines and policies established or adopted by the Information Technology Resource Management Council or other governing or policy board or council that may be created by statute or directive for the purpose of information technology oversight or review.

261. INFORMATION TECHNOLOGY ACQUISITION PROCEDURES.

01. Definition. For purposes of these rules, "Information Technology Property" includes, but is not limited to, all present and future forms of computer hardware, computer software, or services used or required for automated data processing, computer related office automation or telecommunications. "Telecommunications" means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images over a distance.

02. Purpose. Specialized procedures for the purchase of Information Technology are necessary for several reasons, including:

- a. Information Technology changes so rapidly that product life cycles range from 12 to 36 months.
- b. Purchase of Information Technology requires significant technical understanding from both the agency and Purchasing Activity staff.
- c. Information Technology purchases in many cases requires a specialty process due to unique technologies or applications.

03. Applicability. Unless otherwise indicated, the definitions in Section 67-5716 Idaho Code and these rules apply to these Information Technology acquisition procedures. In particular, these procedures apply to all agencies as the term "agency" is defined by these rules.

04. Procedures.

- a. To facilitate the timely processing of Information Technology purchases and minimize delays, the requisitioning agency shall have completed the following actions PRIOR to submission of a requisition to the Division:

i. Financially justified its requirements (including cost/benefit analysis, multi-year financial approvals, and identification of funding sources).

ii. Ensured that the proposed acquisition meets applicable Information Technology standards, guidelines, conventions, and systems plans as adopted by the Information Technology Resource Management Council.

iii. Adequately reviewed available functionally equal requirement options and be prepared to provide a justification to defend the specifications in the event of a vendor appeal. The agency will be responsible for hearing officer costs incurred by the Division in the event of any Administrative Procedures Act (APA) actions or appeals.

iv. Submit with the requisition evidence of approval of the acquisition by the appropriate approving authority within the Department of Administration.

b. For all Information Technology requirements regardless of dollar value, the Division will attempt to aggregate Information Technology purchases as much as possible. When appropriate it will establish statewide contracts to fulfill multiple agency needs and make these contracts available to local units of government.

c. For Information Technology [IT] property not available through statewide contracts, if the property to be acquired may be reasonably expected to cost less than \$2,500, such property may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state. For purchases of [IT] property (excluding services) exceeding \$2,500, but less than the limit established by Idaho Code for sealed bidding, the statutory provisions of Section 67-5718 Idaho Code will apply.

d. For Information Technology services, if the services to be acquired may be reasonably expected to cost less than \$25,000 total through a "fixed, not to exceed price" contract not exceeding one year in duration (including renewal or extension options), such services may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state. Information Technology services exceeding the previous parameters or exceeding \$25,000 will be acquired in accordance with the statutory provisions of Section 67-5718, Idaho Code.

e. A team approach is recommended for all major acquisitions. This team will be composed of employees from different agencies and/or disciplines appropriate to the acquisition and will be convened by the Administrator or authorized designee. At a minimum it will include a representative from the Division and an Information Technology specialist. It will meet as needed to ensure that the most expedient and cost-effective method of purchasing is deployed, not to evaluate the need for, or judge the value of, the property or services requested.

f. To encourage reductions in processes and administrative costs, solicitation documents, the specifications, and terms and conditions may provide options (e.g. bid expiration time frames, acceptance criteria, dollar thresholds, etc.) that allow other agencies to utilize the Information Technology bids of the original requesting agency without the necessity of issuing additional bids. Adequate notification to potential vendors of these extended use purchases will be included in the solicitation documents.

g. Upon adequate notice to vendors and development of justifiable conditions, vendor pre-qualification procedures may be utilized. Only vendors passing the pre-qualification process will be allowed to participate in the individual acquisition.

05. Multiple Award for Information Technology Property. A multiple award is an award of an indefinite quantity contract for one or more similar items of Information Technology property or services to more than one bidder or offeror, and agencies shall be obligated to order all of their actual, normal requirements for the specified property or services from those contractors. A multiple award contract shall be appropriate if more than one (1) contractor is necessary to furnish the types and quantities of property required by state agencies, to provide expeditious and cost-efficient acquisition of property or to enable state agencies to acquire property which is compatible with previously acquired property. No award of a contract to multiple bidders shall be made unless the Administrator makes a written determination that the multiple award satisfies one (1) or more of the statutory criteria. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. Multiple awards shall not be made when a single award will meet the agency's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available property or supplier selection to allow for use preference, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of bidders or offerors necessary to meet the valid requirements of using agencies. If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

20. PRINTING

20.1 Introduction

Regardless of project size, complexity, budgets, or deadlines the challenges of printing are basically the same. The juggling of time, energy and resources can be stressful and complex. Yet, despite its importance, print buying is largely a process of self-education, learned on the job or from the person who had the job previously, or by trial and error. This can lead to unnecessary frustrations and costly mistakes. This information is presented in cooperation with representatives from the printing industry to assist state employees to plan, schedule, develop specifications, and purchase printed material in accordance with state statutes and purchasing rules.

At any time you need help with your printing project, please contact the Division of Purchasing (327-7465). This information is also available as a separate publication entitled : *Getting It Printed, Guidelines to Understanding and Purchasing Printing*. It is available at the Idaho Purchasing Homepage web site (<http://www2.state.id.us/adm/purchasing/default.htm>).

20.2 Utilizing The State Copy Center

Many times your simpler printing projects can be accomplished with high quality copying and minor bindery services. In the Boise area, the Copy Center located at 550 West State, Basement, 334-2124 offers the following services:

- high-speed, quality reproduction (up to 11 x 17)
- binding (spiral, wire, stapling, & drilling)
- single sheet folding
- self service computer & scanning equipment
- convenience copiers
- delivery

20.3 Project Planning

Printing is simply defined as an impression of ink on paper. The printing process however, is much broader and includes such things as planning, concept and design, layout, photography, artwork, text creation, paper selection, negatives, printing, proofing, packaging and delivery, selection of printing vendors, getting competitive solicitations, and many other considerations. Although modern technology has changed the roles of the graphic designer, desktop publisher, and printing buyer, all persons involved in the process must work closely together to achieve the desired results at economical prices.

Planning is an important part of the printing process. Listed below are a few suggestions that will assist you in planning your printing project. Consideration of these points will help you determine the size, quality, and the correct purchasing methods for the project.

- Purpose - Consider questions such as: What will this brochure, pamphlet, booklet, report, etc. be used for? Who will see it? What is the life span of the project - will it be used one

time and discarded or be used over and over again? How can it be improved over the last printing?

- Budget - How much money is available to spend on this project? Know your limits, low and high end. Plan for additional costs like last minute changes.
- Specifications - Detailed information on your printing project that the printer needs to know such as: quantity, size, paper, ink, packaging, proofs, etc. See the *Chapter 3, Developing Specifications* for a complete list of items to be considered.
- Recommendations - Use the expertise of others. Get knowledgeable and creative people involved from the beginning of the project.

It is a good idea to involve printing vendors early in your project. They can provide valuable assistance in planning your printing project and developing specifications. Don't assume that vendors know what you want. Assume they don't. When projects will require competitive solicitations, care should be taken so as to not mislead a vendor into believing it will receive the project award or should proceed with a printing job without proper authorization.

- Cost Estimates - The printing vendors can be very helpful estimating the cost of a printing job. Always plan for additional costs. Estimates are important to determine if projects will require competitive solicitations or be within budgeted funds.
- Communication Records - Details are easily forgotten. Keep written records of conversations with all persons connected with the printing project, especially printing vendors, to avoid confusion and misunderstandings. Confirm understandings to reduce confusion later.
- Scheduling - Whenever possible attempt to define tasks, assign responsibilities, and set timelines for projects, especially if groups of people are involved in the printing process.
- Selecting Appropriate Vendors - Printing vendors have various expertise and abilities and time should be spent getting to know their capabilities. Take advantage of sales representative visits and ask them about their operations.

The Division of Purchasing maintains a list of registered printing vendors by detailed commodity codes (96603-96695) which identifies the type of printing projects the printer is capable of doing. While this listing does not address quality, it does indicate whether the printer is capable of doing offset printing, 4 color jobs, embossing, form printing, etc. This list is accessible on the internet Idaho Purchasing Homepage under Vendor Inquiry (www2.state.id.us/adm/purchasing). Remember that any competitive solicitation (Request For Quotation or Invitation To Bid) requires that the vendor be registered before their quote or bid can be accepted.

Please contact the Division of Purchasing if you have any questions about the vendor registration system or about selecting appropriate printing vendors.

20.4 Developing Printing Specifications

Developing specifications are the most important part of the printing project. Every printing job, even the most simple and routine, must include carefully developed and thorough specifications. Poorly developed specifications can cause serious problems such as cost overruns, time delays, interruptions, and receiving a product that does not meet your needs. Good specifications are complete, accurate, and

written in terms which printers can understand. They communicate to the printer exactly what you want and expect. Never assume the printer knows what you want. Assume they don't. Even if you don't have the expertise to develop specifications yourself and rely upon the printing vendor or others for recommendations, provide a set of specifications with every printing job. This will prevent missed information and misunderstandings.

The following is a list of specifications which contains information needed for a printing job, including legal terms and conditions. A good specification sheet contains all the information required for competitive bidding and will become a part of any purchase order or contract issued.

The Appendix contains a model printing specification form as well as examples of simple and complicated specifications. You may copy this form or use something similar that allows you to simply fill in the blanks, adding or deleting items as needed. A specification form should be used for all situations including simple non-competitive orders and formal or informal bidding. The Division of Purchasing can provide this form as an e-mail attachment or on diskette and is available to answer any of your questions regarding specifications.

20.4.1 Specifications List & Instructions

1. AGENCY NAME & REQ #: Agency Name and Requisition Number
2. TITLE & DESCRIPTION: Title and description of printed materials
3. OBJECTIVE: This an optional entry that can be used when a print job calls for a variety of services and a Project Coordinator is needed. Here is a sample objective:

The objective of this RFQ is to provide professional services *in design, typesetting, layout, printing and finish work for (name of project)*. The project coordinator shall be *(name of project coordinator)*. Design, typesetting, layout, printing and finish work shall be submitted to the project coordinator in each step of production for agency approval and authorization to continue on to the next step of production. Printing must not commence until authorization to print is received from the project coordinator.
4. QUANTITY: Total amount or number of issues if more than one printing
5. CHANGES IN QTY NOTICE: Agency reserves the right to make minor changes in item quantities at time of order placement.
6. OVERRUN/UNDERRUN: Overruns in Excess of Ten Percent (10%) Will Not Be Accepted, Underruns Will Not Be Accepted.

Percentage of Overrun/Underrun may be specified or No Overrun/Underun may be specified. If nothing is specified, printing industry standard is ten percent (10%).
7. SIZE: Flat Size: Overall size prior to folding

- Finished Size: Trimmed/Finished page size after binding
8. PAGE COUNT Total Number of Pages plus Cover or Pages, Self-Covered. A page is one side of a sheet of paper. If a sheet of paper is printed on both sides, it is counted as two pages.
 9. PAPER/STOCK: Cover: Specify Brand, Weight, and Color
Stock must Be Listed in the 1997-98 (or latest) Competitive Grade Finder.

Text: Specify Brand, Weight, and Color of text
Stock must be listed in the 1997-98 (or latest) Competitive Grade Finder.
 10. INK: Cover: Specify Color such as Black, PMS Color (Pantone Matching System), or 4 Color Process

Text: Specify Color such as Black, PMS Color (Pantone Matching System), or 4 Color Process for printing of text

Indicate number of colors to be used : 1, 2, 3, 4, or 5 Color(s). If color is not specified, it will be assumed that it is black.

4 Color Process refers to the four process colors: yellow, magenta, cyan, and black and is normally used for the reproduction of color pictures.
 11. BLEEDS: Printed image extending to the trimmed edge of the sheet (or off the page). Indicate whether one- sided, two-sided, three-sided, or full (all four sides) bleed. Specify total number of bleed pages with the above characteristics of bleed.
 12. COPY: Method in which copy will be provided to the printer. Either Typesetting and/or Layout Required by Printer, Camera-Ready, Negatives Furnished, or Diskette.

Camera-Ready means ready to go to camera with no typesetting or layout required.

If provided on diskette, indicate software program used such as Pagemaker, Illustrator, etc. Diskettes should be proofed thoroughly before sending to the printer. A hard copy should be supplied with the diskette to verify the layout of the printing job. If there is any doubt as to the job layout, ask the printer for a laser proof before going to press.
 13. PHOTOS: Number of Color and/or B&W Photos.
 14. PROOFS: Indicate Laser, Blueline, or Match Print/Color Key

Laser Print Proofs are used to check for layout, misspelled words, misplaced commas, decimals. Laser Proofs are the least expensive. If errors are found, they can easily be corrected.

Blueline Proofs (usually used after Laser Proofs) are used for making sure that pages are in the correct order and that pictures (photos) are properly placed. They are not used for proofing text. Blueline Proofs are made after negatives have been shot. Blueline Proofs are much more expensive.

Match Print or Color Key Proofs are used to check the quality of two, three, or four color work.

15. FOLDING: Indicate Parallel or Right Angle Fold and final folded size. Certain folds are more costly than others, i.e. gatefold.
16. SPECIAL APPLICATIONS: Die-Cut, Scoring, Perforations, Varnish, Embossing, Lamination

Die-Cut: Use of sharp steel cutting rules to open an area to the required image or shape.

Scoring: Creating a crease on heavier weight papers to produce a clean accurate fold.

Perforations: Holes cut in stock for the purpose of facilitating separation of individual units. Indicate number and location of perforations and whether vertical, horizontal, or right angle (as in business reply cards).

Varnish: A thin, protective coating applied to a printed sheet. It can be all or part of the ink

Embossing: Impressing an image in relief to achieve a raised surface.

Lamination: A plastic film bonded by heat and pressure to a printed sheet for protection or appearance.
17. BINDING: List the type of bindery required: Stapling, Collating, 3-Hole Punched, Saddle Stitch, Perfect Bind, Plastic Bind, or Wire-O Bind. A list of bindery terms are included in the Appendix for reference.
18. PACKAGING: List packaging details such as Boxed, Wrapped, or Shrink Wrapped and the amount required in each package.
19. DELIVERY DATE: Required Delivery Date
20. DELIVERY INSTRUCTIONS: Special Delivery Instructions, either Inside Delivery to a specified location or to Dock/Receiving Area. List contact person where applicable.
21. SPECIAL REQUIREMENTS: Special Terms and Conditions specific to printing.

22. QUALITY STATEMENT: All printing must be clear and legible, no swelling, illegible printing, blemishes or missing pages will be accepted. Project calls for a quality finished product. If this is not achieved, publication may be rejected. Agency reserves the right to reject any or all bids.
23. SUBCONTRACTING STATEMENT: Unless otherwise allowed by the State in the Request for Quotation, the Contractor shall not, without approval from the Ordering Agency, enter into any subcontract relating to the performance of this Contract or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of responsibility for the professional and technical accuracy and adequacy of the work. The Contractor shall be responsible for all work performed under this Contract, shall be the sole point of contact for the agency, and shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Contract by Contractor's subcontractor or its sub-subcontractor.
24. ALTERATIONS STATEMENT: In case of customer alterations, printer to provide Statement of Added Charges by page number. Vendor is to indicate charge per page for customer alterations to text. Agency will not accept responsibility for vendor error.
25. OWNERSHIP STATEMENT: All originals, negatives and mechanicals remain the property of the ordering agency, and shall be returned to same upon completion of the printing.
26. DELIVERY DEADLINES: Delivery is critical. The decision to purchase from responding, responsible vendors will be based on price and delivery time. It is expected that delivery will be made within the time specified in your bid response.

Suggested wording for delivery deadline:

Agency requires delivery of all (name of project) to be delivered no later than (date).

or

Agency requires delivery of all items quoted _____ working days ARO (After Receipt of Order)

Can You Meet the Delivery Requirements?

YES

NO

Circle the Correct Response.

If your response is no, what is the earliest possible delivery.
_____ Days.

26. WHERE PRINTED?: Pursuant to *Idaho Code 60-101*, all printing contracts must be executed in Idaho, except those falling within the provisions of *Sections 60-103 of the Idaho Code*, dealing with excessive charges and quality of work.

Suggested wording:

QUESTION: Will any portion of this printing contract be executed outside the State of Idaho?

PLEASE CIRCLE APPLICABLE ANSWER

YES NO

If one of the above answers is not circled, the bid submitted will be computed as being printed outside the State of Idaho.

27. ADDITIONAL CHARGES:

Suggested wording for additional charges (if allowed):

Vendor Charge per Page for Customer Alterations to Text. Per Page:\$_____.

Vendor Charge for Additional Pages. Per Page:\$_____.

Vendor Charge per 1000 for Each Additional 1000. Per 1,000 \$_____.

20.5 Purchasing Rules and Methods

Printing projects are subject to normal purchasing rules and procedures regarding informal quotes (Request For Quotations) or formal sealed bids (Invitation To Bids) found in the Division of Purchasing Rules IDAPA 38.05.01. The complete Division of Purchasing Rules may be accessed through the internet at the Idaho Purchasing Homepage web site (www2.state.id.us/adm/purchasing).

20.5.1 Less Than \$1,500

Printing jobs costing **less than \$1,500**, not available on statewide contracts, do not require competitive bidding. They may be purchased as the agency sees fit, in accordance with good business practice and in the best interests of the State.

20.5.2 Over \$1,500 and Up to \$25,000

Jobs costing **over \$1,500 and up to \$25,000** (*depending upon your agency's delegated purchasing authority*) and not available on statewide contracts, require a minimum of three (3) competitive solicitations (Request for Quotations) from registered vendors with a significant Idaho presence as defined by Idaho Code.

These are informal quotes and may be obtained verbally, by written RFQ's, by facsimile, or by telephone. Because of the complicated nature of printing, written Request For Quotations that contain complete and accurate specifications are always in the best interests of the agency and are highly recommended. If you do not have a standard Request For Quotation form already in use, the Division of Purchasing can provide samples.

Significant Idaho economic presence as defined in Idaho Code means the bidder must have, for a minimum of one year prior to the bid, maintained in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property. Further, if the bidder is a corporation, it must be registered and licensed to do business in the State of Idaho with the Office of the Secretary of State.

20.5.3 Over \$25,000 or Exceeding Your Delegated Authority

All printing requirements expected to cost **over \$25,000 or exceeding your delegated authority** are processed through the Division of Purchasing as formal sealed Invitation To Bids.

Any printing contract exceeding one (1) year in duration, *regardless of dollar amount*, is also processed through the Division of Purchasing.

20.6 Special Bidding/Evaluation Requirements

In addition to the above rules, there are special requirements for solicitations of printing. *Idaho Code 60-101, 60-103* specifies that printing should be done within the State of Idaho unless the cost is shown to be 10% higher than printing done outside of the State. For this reason, the following statement is added to all formal bid or informal quotation documents that include printing:

Please indicate whether any portion of this printing will be done OUTSIDE of the State of Idaho.

YES_____ NO_____

Failure to answer this question will result in the bid being evaluated as being printed outside of the State of Idaho.

For bids or quotations for printing being produced outside of the State of Idaho, 10% additional cost is added to the bid for evaluation purposes only. The additional 10% is not added to any purchase order or contract that may result from the bidding process, it is for bid award purposes only.

20.7 Idaho Reciprocal Preference Law

In addition to the above statute, The Idaho Reciprocal Preference Law (*Idaho Code 67-2349*) can also cause bids from out-of-state bidders to be evaluated at a higher cost than is actually written on the bid. Some states provide a preference for vendors within their state and add a percentage to bids from outside their state. Where that happens, the State of Idaho responds in like manner by adding the same percentage to bids received from vendors who are not "domiciled" in Idaho. Domiciled means: where a corporation is chartered or incorporated or where a sole proprietor or partnership is located or has its permanent headquarters. Bidders domiciled in states other than Idaho who have a "significant Idaho economic presence" for one year preceding the bid date, may be considered an Idaho domiciled bidder.

To access the most current information, the State of Oregon keeps an up-to-date list of states and their preferences. This information is available through the internet at:
<http://tpps.das.state.or.us/purchasing/recplaw.html>

or through the Idaho Purchasing web site under RELATED LINKS. From the Oregon web site, click on PURCHASING LINKS and then on OREGON RECIPROCAL PREFERENCE LAW to access this information.

The following states have a preference for vendors within their state. Bidders without a "significant Idaho economic presence" domiciled in the following states will, for bid evaluation purposes, be penalized the percentage indicated:

ALASKA	5%	OHIO	100% for printing
HAWAII	3%	OREGON	100% for printing
INDIANA	5%	SOUTH CAROLINA	7%
MICHIGAN	100% for printing	WEST VIRGINIA	2.5%
MONTANA	8% for printing	WYOMING	10% for printing
NEW MEXICO	5%		

In determining the lowest responsible bidder, an amount equal to the above percentage should be added to each bid submitted by a firm domiciled in any of the above-listed states. In no instance will the increase (penalty percentage) actually be paid to a vendor whose bid is accepted.

In the case of printing, the percentages listed above are added to the 10% already described previously in Section 4.4 Special Bidding/Evaluation Requirements (*Idaho Code 60-101, 60-103*). For example a bid received from a printing vendor in South Carolina (not domiciled in Idaho) would have an additional 17% added to their bid for evaluation purposes, Alaska would be 15% and Michigan would be 110%.

20.8 Use of Statewide Contracts

The Division of Purchasing has statewide contracts in place for preprinted carbonless forms, cut sheet or pinfed, printed envelopes, standard business cards and letterhead stationary. A complete listing of contracts is posted on the internet at the Idaho Purchasing Homepage.

By state statute, statewide contracts must be utilized unless the printing job does not conform to the specifications of the contract (I.C. 67-5717). Agencies should always closely examine their printing requirements to determine if an item on contract will meet their needs. Some agencies have individual contracts for the printing of brochures, newsletters, etc. Contact the Division of Purchasing if you need copies of statewide contracts for printing.

20.9 Special Printing Information Requirements

Idaho Code 60-202 requires that each publication includes information about the agency responsible for the publication, publication identification or sequence number, and the program code responsible for the publication.

Sample: Costs associated with this publication are available from (agency name) in accordance with Section 60-202, Idaho Code.

20.10 State Library Depository Program

The following information is provided by the Idaho State Library as a guideline to help you determine which public documents should be submitted to the Library.

20.10.1 It's the Law

State law requires all state agencies to deposit twenty copies of each of their publications with the Idaho State Library. As compared to other states, Idaho's depository law is very brief:

Idaho Code 33-2510. State librarian -- Depository for public documents -- Distribution. --It shall be the duty of the head of every agency, board, bureau, commission or department of the state of Idaho, including all state supported institutions of higher education in Idaho, to deposit with the librarian of the Idaho state library for use and distribution to the academic, regional public, special libraries of Idaho, the Library of Congress, and to others within the discretion of the state librarian twenty (20) copies of all documents, reports, surveys, monographs, serial publications, compilations, pamphlets, bulletins, leaflets, circulars, maps, charts, or broadsides of a public nature which it prints, mimeographs or otherwise reproduces for public distribution. [1972, ch. 165, § 1, p. 413]

The Idaho State Library distributes the publications to:

- one copy goes to the Library of Congress in Washington, D.C.
- seventeen are distributed to designated libraries in Idaho for public use
- two are kept at the Idaho State Library, one for the archives and one for use by patrons or other libraries.

Terminology. Although document is the term used in the depository law, the word publication is probably more descriptive of the formats listed in the law. At the State Library, we use the two interchangeably.

State agencies. Note that the law pertains to educational institutions and to independent units such as boards and commissions as well as to tax-funded agencies. Temporary bodies such as task forces and councils are not specifically named in the law, but are usually affiliated with a permanent agency and often produce some of the most valuable information on current policy issues.

20.10.2 What is a State Document?

"What do you mean by state document?"

We often hear this question regarding the types of materials to be sent to us for deposit. This article should help clarify the matter by looking at legal requirements, criteria for deposit, and categories of publications. It will also discuss some gray areas that are open to interpretation

20.10.3 Criteria for Deposit

To decide whether a publication should be deposited, ask yourself two key questions:

- Is it published by a state agency or at state government expense?
- Is it distributed outside the agency?

If the answer is yes on both counts, the item is a likely candidate for deposit. Funding source and scope of distribution are the two main criteria for determining whether a publication should be deposited with us. Let's take a closer look at each of these criteria.

Funding source. In general, if the publication is funded by taxes or constituent fees, it is eligible for deposit. This includes items published by state agencies, for state agencies, under contract with state agencies, or in cooperation with state agencies. Today, governmental functions are increasingly carried out through partnerships with private-sector firms and other levels of government. It is especially important to capture the research and policy information found in publications resulting from such partnerships.

Distribution. A key phrase in the law is "for public distribution." Internal memos, procedure manuals, staff newsletters, and in-house reports do not qualify for deposit. On the other hand, any publication distributed beyond the confines of the agency should be deposited, even if it targets a relatively narrow audience such as program participants or client groups. In our experience, such publications provide insight into the workings of the agency and will be of interest to many users beyond the intended audience.

20.10.4 Categories of Publications

Another way to think about depository requirements is to look at broad categories of publications. Most state publications pertain to the state's financial and legal framework, agency operations, or client services.

- Financial and legal framework. In this category are budget documents and audit reports; legislative journals, reports, bills, laws, and codes; judicial decisions; administrative rules and codes; Executive Orders; and Attorney general's Opinions. Distribution of many of these is formalized under separate statutes, but the remainder are subject to the depository law.
- Agency operations. This category includes annual reports, plans, program reviews, and audit reports. It also covers informational by-products of agency operations, such as directories, bibliographies, maps, statistical compilations, surveys, and research reports.
- Client services. This category may include such items as newsletters, manuals, hand-books, guides, safety bulletins, consumer pamphlets, program brochures, or information sheets targeting a specific client group.

20.10.5 Gray Areas

Criteria and categories can help in determining depository status, but gray areas remain. This section covers some of the more common ones.

Draft reports. Draft versions of reports are generally exempt from deposit, as long as we receive the final version. The depository program can serve as an outlet for soliciting public comment, provided there is adequate lead time. Keep in mind that it may be several weeks before the depository libraries actually receive and process the draft report.

Conference and workshop materials. Any formal conference proceedings should be deposited, but manuals designed to accompany oral presentations and workshops should be deposited only if they are complete in themselves.

Minutes of meetings. Minutes are generally exempt from deposit, although we do collect single copies on a case-by-case basis. Public access to minutes is governed by Idaho Code 67-2344. Minutes should be treated as public records with established retention and preservation schedules.

Press releases and speeches. We do not collect most speeches and press releases. They are primarily of current value and are distributed through other channels.

Sale items. Publications dependent on sales or subscriptions as their primary source of revenue are generally exempt from depository distribution. We do ask that two copies be deposited for archival purposes, for future research, and for loan to other libraries.

Technical Reports. Highly technical and scientific reports should be deposited, but the full twenty copies may not be necessary. Give us a call if you want to discuss a narrower distribution.

Electronic formats. This is a broad topic that may be treated more fully in a future edition. The 1972 depository law does not recognize current technologies, except perhaps under the phrase, "or otherwise reproduces." Keep in mind that at this stage, posting electronic documents on a bulletin board or web site does not meet the need for either broad public access or historical preservation. To the extent possible and practical, electronic documents should be printed out for distribution through the depository program.

20.10.6 Ask us!

We realize that these guidelines will not cover every contingency. If you have questions about a particular publication, give us a call. Together we can determine the best way to make your information products available to Idahoans.

Carol Silvers, State Documents Coordinator
Idaho State Library, 325 W. State, Boise ID 83702
Phone: (208)334-2150; toll-free in Idaho (800)458-3271
Fax: (208)334-2194; E-mail: csilvers@isl.state.id.us
State Library Home Page: <http://www.lili.org/isl>

20.11 Bindery Selection

GBC Binding: General Binding Corporation trade name for plastic comb binding.

3-Hole Drill: Drilling for standard 3-hole binders.

Perfect Bind: To bind sheets by trimming at the spine and gluing them to a wraparound cover.

Plastic Bind: Books bound with plastic elements in spiral form, inserted through holes punched along the binding side. Comes in selected colors.

Saddle Stitch: To bind by stapling sheets together where they fold at the spine.

Shrink Wrap: Method of tightly wrapping packages or products in plastic film.

Side Stapled: In binding, to wire the sheets or signatures of a magazine or booklet on the side near the backbone.

Spiral Binding: A book bound with wires in spiral form inserted through holes punched along the binding side.

Wire-O Binding: A continuous double series of wire loops run through punched slots along the binding side of a booklet.

20.12 Paper Selection

Bond: Most commonly used for letterheads and business forms. It is designed to accept ink readily from a pen, typewriter, or printer. Other terms used for this type of paper include Writing, Stationary, Business Paper, etc.

Book: Used for book printing as the names suggests, and is less expensive than text papers. Book papers come in a wide range of weights so you can vary the thickness of a book with the same number of pages.

Bristol: Type of board paper used for post cards, business cards and other heavy-use products.

Coated: Designed for offset printing, this paper is coated to enhance the ink coverage, and, in high gloss coated, to resist the moisture level of offset printing.

Cover: Developed for durability and dimensional stability. Sometimes heavier weights of book and coated stocks are available in matching colors.

Dull Finish: Semi-gloss paper finish.

Index: An inexpensive stiff paper which is receptive to ink and can be purchased in smooth or antique finish. Most often used for file cards and postcards.

Kraftwrap: Heavy brown paper used in packaging.

Laid Paper: Paper with a pattern of parallel lines at equal distances, giving a ribbed effect.

Ledger: Designed to be written on and used for accounting sheets and many legal certificates.

Linen Paper: Paper with a pattern of parallel linen crossing lines.

Matte Finish: Dull paper finish without gloss or luster.

Tag: Board grade paper used for products such as tags and file folders.

Text: Designed for interesting textures and colors, these papers are used for booklets, announcements, brochures, etc.

Vellum: In paper making, a toothy finish which is relatively absorbent for fast ink penetration.

Wove Paper: Paper having a uniform unlined surface and a smooth finish.

20.13 Printing Trade Customs

Cancellations: All orders that are canceled after work has been started are subject to charges for materials ordered and work performed.

Experimental work performed at customer's request, such as sketches, drawings, compositions, plates, presswork and materials shall be charged at current rates.

Alterations: Proposals are only for work according to the original specifications. If through customer's error, or change of mind, work has to be done a second time or more, such extra work will carry an additional charge, at current rates for the work performed.

Proofs: One proof shall be submitted. Corrections, if any, are to be made thereon and the proof should be returned marked "O.K." or "Correct and Print" and signed with name or initials of person authorized to pass on same. If revised proofs are desired, request must be made when proof is returned. Printer is not responsible for errors if work is printed as per customer's O.K.

Quantity: Unless specific arrangements are made in advance, quantity ordered is subject to a trade over-under allowance of ten percent (10%).

Delivery: Unless otherwise specified, the price quoted is for a single shipment, F.O.B. customer's local place of business.

Paper stock furnished by the customer shall be properly packed, free from dirt, grit, torn sheets, bad splices, etc., and of proper quality for printing requirements. Additional cost due to delays or impaired production on account of improper packing or quality shall be charged to the customer.

20.14 Glossary of Industry Terms

The following information presents printing industry terminology (terms) and customs. The following industry terms and phrases are presented to help users when purchasing printed materials. These terms represent areas of design, material and production.

The printing industry has its own set of generally accepted customs. Being aware of these customs will assist employees with purchasing printed items and when working with printing vendors. **It is important to note that when industry customs are in contradiction with state terms and condition, the state terms and conditions shall supersede and prevail.** Therefore it is important to provide specific written information about these terms and conditions as part of all bid specifications.. These documents determine how specific matters are handled with every job and vendor.

The following terms may not necessarily pertain to every printing Job. Use this list to define and describe requirements when developing bid specifications. These definitions will assist with readers' understanding of industry concepts.

Accordion Fold: In binding, a term used for two or more parallel folds which open like an accordion.

Against the Grain: Folding or feeding paper at right angles to the grain direction of the paper. This can result in cracking or tearing when stock is folded.

Author Alteration: Changes in copy or specifications made after production has begun. Generally referred to as "AA's" or "AC's".

Artwork: All illustration copy used in preparing a job for printing.

Back To Back: In printing, on both sides of a sheet.

Backbone: The back of a bound book connecting the two covers; also called spine.

Banding: Method of packaging printing material using paper, rubber, plastic, string, or fiberglass bands.

Baseline: The imaginary line on which letters in a line of text rest.

Basic Weight: The weight in pounds of a ream (500 sheets) of paper cut to a given standard size for that grade; e.g., 500 sheets 25" X 38" of 50-lb. Book paper weigh fifty pounds.

Bind: To fasten sheets or signatures and adhere covers with glue, wire, thread, or by other means.

Bindery: Print shop area that does trimming, folding, binding, and other finishing tasks.

Binding Stub: Stub in which staples are placed for binding snap set forms into books.

Black-and-White: Originals or reproductions in black ink only as distinguished from multicolor.

Bleed: An extra amount of printed image which extends beyond the trim edge of the sheet or page.

Blowup: Photographic enlargement.

Blueline: Prepress, photographic proof where all colors show as blue image on white, light sensitive dilux paper.

Body Type: Type of smaller sizes (usually 13-point and smaller) used to present the main text (body) of a publication.

Bond Paper: A grade of writing or printing papers where strength, durability and permanence are essential requirements; used for letterheads, business forms, etc. The basic size is 17" X 22".

Book Paper: A general term for coated and uncoated papers. The basic size is 25" X 38".

Breaks: With continuous forms, represents a separation of forms in a case of forms.

Bristol: Type of board paper used for post cards, business cards and other heavy-use products.

Brochure: A pamphlet bound in booklet form.

Caliper: The thickness of paper, usually expressed in thousandths of an inch (mils).

Camera Ready: Copy which is ready photographic ready.

Carbon Dummy: Mock-up of exact paper weights and colors with sample of carbon to be used (when applicable). Used for testing legibility.

Clip Art: Artwork that can be cut out of a catalog and reproduced by printing methods.

Coated Paper: Paper that has a surface coating which produces a smooth finish. Surfaces vary from eggshell to glossy.

Collate: In binding, the gathering of sheets or signatures.

Color Correction: Any method such as masking, dot-etching, re-etching, and scanning.

Color Monitor: Any visual monitoring device that has the capability of producing points of light in any color other than black and white.

Color Process: Alternate term for four color process printing.

Color Proof: A proof combining all colors. The proof is checked for proper color determination, size, registration, and the like.

Color Separation: In photography, the process of separating color originals into the primary printing color components in negative or positive form. A set of four halftone negatives for making plates for 4-color process printing.

Column Width: The horizontal measure of the column.

Composition: Material consisting of text in typewritten form for photo-offset reproduction or in typeset form for letterpress and other methods of printing.

Computer Printer: A device that converts data into near letter quality (NLQ) printed form.

Condensed Type: A narrow or slender type face.

Continuous Form: Series of perforated sheets attached in roll form. The sheets are fed into a printing press or other device, such as a computer printout, and are separated into individual sheets by tearing them apart along the lines of the perforations.

Continuous Tone: A photographic image which contains gradient tones from black to white.

Copy: Any furnished material (typewritten manuscript, pictures, artwork, etc.) to be used in the production of printing.

Cover: Outside surface of a case-bound or soft-cover book. The outside front is called first cover, inside front is called second cover, inside back is called third cover, outside back is called fourth cover.

Cover Paper: A term applied to a variety of papers used for the covers of catalogs, brochures, booklets and similar pieces.

Crash Printing: Letterpress printing on carbon or carbonless forms so image prints simultaneously on all sheets in the set.

Creep: Phenomenon of middle pages of a folded signature extending slightly beyond outside pages. This can create margin problems and must be corrected when many pages are involved.

Crimping: Standard method of fastening papers or papers and carbon on a continuous form by piercing the sheets of paper or paper and carbon in the margins and locking them together by folding back the flaps.

Crop: To eliminate portions of the copy, usually on a photograph or plate, indicated on the original by cropmarks.

Curl: In paper, the distortion of a sheet due to difference in structure or coatings from one side to the other, or to absorption of moisture on an offset press.

Decollator: Machine used on continuous forms to remove the margins and/or carbons and separate the paper parts.

Desktop Publishing: Designing, laying out, editing and producing a publication electronically, using a personal computer, word-processing and graphics software, a desktop publishing software, and output to a computer printer, laser printer or imagesetter.

Desktop Publishing Software: Software that can produce professional-looking publications.

Die: Sharp metal rule used for die-cutting or block of metal used for embossing or foil stamping.

Die-Cutting: The process of using sharp steel rules to cut special shapes for labels, boxes and containers from printed sheets. Die-cutting can be done on either flatbed or rotary presses. Rotary die-cutting is usually done in-line with the printing.

Die-Stamping: An intaglio process for the production of letterheads, business cards, etc., printing from lettering or other designs engraved into copper or steel.

Digital Plates: Printing plates that can be exposed by lasers or other high energy sources driven by digital data in a platesetter. These plates are used with high-tech processing.

Digital Printing: Printing by plateless imaging systems that are imaged by digital data from prepress systems.

Diskette: A thin, flexible magnetic disk and a semi-rigid or hard protective jacket, in which the disk is permanently enclosed. (Also known as a flexible or floppy disk)

Display Type: Type of a larger size (usually 14-point and higher) used for Headlines, and Ads.

Dots Per Inch (DPI): A measure of the resolution of a screen image or printed page. Spots per inch (spi) is a more appropriate term.

Drill: To bore holes in paper so sheets fit over posts of loose-leaf binders.

Drop-Out: Portions of originals that do not reproduce, especially colored lines or background areas (often on purpose). Sometimes, this is a result of poor quality originals.

Dry Gum Paper: Label paper with glue that can be activated by water.

Dummy: A preliminary layout showing the position of illustrations and text as they are to appear in the final reduction. A set of blank pages up in advance to show the size, shape, form, and general style of a piece of printing.

Duotone: In photomechanics, a term for a two-color halftone reproduction from a photograph.

Duplex Paper: Paper with a different color or finish on each side.

Editing: Preparation of a manuscript for publication. It may include revision, rewriting, and checking for accuracy, as well as what is usually termed "Copy editing". Unless a copy editor is technically qualified, he or she should not make technical changes. Copy editing includes checking numerical sequence, marking for type, and making the style of the manuscript consistent. Spelling, punctuation, and grammar are corrected. Modified proofreader's marks are used in editing the manuscript. When possible, however, the corrections are written above the affected word or words rather than in the margin. Colored inks or colored pencils are generally used.

Embossed Finish: Paper with a raised surface resembling wood, cloth, leather or other pattern.

Embossing: Impressing and image in relief to achieve a raised surface; either overprinting or on blank paper (called blind embossing).

Engraver: Person who makes a plate for engraving. Also may refer to trade camera service. Engraving is a method of printing using a plate, also called a die, with an image carved into it.

Felt Side: The smoother side of the paper for printing. The top side of the sheet in paper manufacturing.

File: Any collection of information stored on a disk - a document, a folder, a system file or resource, and application.

Flood Varnish: To cover a sheet with ink or varnish.

Flush Left (or Right): In composition, type set to line up at the left (or right).

Folding: There are two kinds of folds - parallel and right angle. Using these two types of folds, specialty folds can be created. In designing printing, the different types of folds and the limitations of mechanical folding should be considered at the planning level. Otherwise, one or more folds might end up being a costly hand-folding operation.

Foil Emboss: To foil stamp and emboss an image.

Foil Stamping: Method of printing on a letter press using thin metallic or pigmented film and a die.

Folio: The page number.

Font: In composition, a complete assortment of letter, number, punctuation marks, etc. of a printed piece.

Format: The size, style, type, page, margins, printing requirements, etc. of a printed piece.

Galley Proof: A proof of text copy before being made into pages.

Gathering: In binding, the assembling of folded signatures in proper sequence.

Generation: Each succeeding stage in reproduction from the original copy.

GBC Binding: General Binding Corporation trade name for plastic comb binding.

Gloss: Characteristic of paper, ink, or varnish that reflects relatively large amounts of light.

Goldenrod Paper: In offset lithography, a specially-coated masking paper of yellow or orange color used by strippers to assemble and position negatives for exposure on plates.

Grade: One of seven major categories of paper: bond, uncoated book, coated book, text, cover, board, and specialty.

Grain: In paper making, the direction in which most fibers lie which corresponds with the direction the paper is made on a paper machine.

Graphics: The drawing of circles, boxes, lines, and combining them to produce complex images.

Graphic Software: An application program that instructs the computer to draw complex shapes.

Gripper Edge: The leading edge of paper as it passes through a printing press. Also, the front edge of a lithographic or wraparound plate that is secured to front clamp of plate cylinder. Images cannot be printed in this area.

Gripper Margin: Unprintable blank edge of paper on which grippers bear.

Groundwood Pulp: A mechanically-prepared wood pulp used in the manufacture of newsprint and publication papers.

Halftone: The reproduction of continuous-tone images, through a screening process, which converts the image into dots of various sizes and equal spacing between centers.

Halftone Screen: Screen placed in front of the negative material in a process camera to break up a continuous tone image into dot formation.

Hard Copy: The permanent visual record of the output of a computer or printer. Also, the material sent to a typesetter in typed form, for conversion into typeset material.

Hard Proof: A proof on paper or other substrate as distinguished from a soft proof which is an image on a VDT screen.

Hardware: The physical components that make up a personal computer system.

Headline: Words usually set in large type at the head of a page or passage to introduce or categorize.

Head Margin: The white space above first line on a page.

Heat Set Web: Web press equipped with oven to dry ink faster, thus able to print coated paper.

3-Hole Drill: Drilling for standard 3-hole binders.

Image Area: Portion of a negative or plate corresponding to inking on paper. Portion of paper on which in appears.

Imagesetter: In computer imaging, a device that outputs type, line art, and photos in position.

Imposition: The arranging of pages in a press form to ensure the correct order after the printed sheet is folded and trimmed.

Impression: In printing, the pressure of type, or blanket as it comes in contact with the paper.

Index Paper: Light weight board paper for writing and easy erasure.

Ink: Colored liquid material for printing.

In-Plant Printer: Department of an agency, business, or associations that does the printing for the parent organization.

Insert: A printed piece prepared for insertion into a publication, another printed piece, or a mailing.

Keyboard: An input device that allows information to be entered via a set of keys contained in a single unit.

Kraftwrap: Heavy brown paper used in packaging.

Laid Paper: Paper with a pattern of parallel lines at equal distances, giving a ribbed effect.

Lamination: A plastic film bonded by heat and pressure to a printed sheet for protection or appearance.

LASER: The acronym for **L**ight **A**mplification by **S**timulated **E**mission of **R**adiation. The laser is an intense light beam with very narrow band width that can produce images by electronic impulses from digital data.

Laser Printer: A device that converts data into printed form with resolutions ranging from 300 dots per inch (dpi) to 1200 dots per inch (dpi).

Layout: The drawing or sketch of a proposed printed piece. In plate making, a sheet indicating the settings for a step-and-repeat machine.

Leaders: In composition, rows of dashes or dots to guide the eye across the page. Used in tabular work, programs, tables of contents, etc.

Leading: White space between lines of type. Measured in points from baseline to baseline.

Lead Time: Time allocated for a specific job or series of incremental tasks for the job in order to ensure completion and delivery on schedule.

Letter Press: Method of printing from raised surfaces. A letter press is the kind of press used primarily for crash printing of numbers or for die cutting.

Lithography: One of the most common methods of printing which uses a chemically coated plate whose image areas attract ink and non-image areas repel ink.

Logo: Identifying emblem; e.g., State Seal

M: Abbreviation for a quantity of 1000 sheets of paper.

Mailer: Continuous form of two or more parts which are glued together on all four sides and constructed in such a way that it can go through the U.S. Mail without using an envelope.

Make-Ready: In printing, all work done to set up a press for printing.

Manuscript: Handwritten or typewritten copy of material to be printed.

Matte Finish: Dull paper finish without gloss or luster.

Mechanical: Camera ready pasteup of type, photo overlays, line art, and overlays for additional colors on one piece of artboard. Colors should be marked on tissue overlay.

Mechanical Separation: The old camera ready copy process prepared using a separate overlay for each color to be printed. This process is rapidly being replaced by digital or disk generated technologies.

Memory: Any hardware or software that has the capability of permanently retaining data.

Micr Ink: Type of ink containing iron oxide that is used in Magnetic Ink character Recognition equipment such as check sorters used by banks.

Mimeograph: Method of printing using a plastic stencil mounted on a rotating drum containing ink.

Modem: An electronic device that can receive information from a computer and transmit it to another computer.

Monochrome Monitor: A monitoring device that only displays two colors such as black and white.

Mouse: A small mechanical device whose movement on the desk corresponds to pointer movements on your screen.

Mylar: In offset preparation, a polyester film specially suited for stripping positives because of its mechanical strength and dimensional stability.

Negative: In photography, film containing an image in which the values of the original are reversed so that the dark areas appear light and vice versa. Often referred to as "film".

Newsprint: Paper made mostly from groundwood pulp and small amounts of chemical pulp. Used for printing newspapers.

Numbering: Number sequence to be printed.

Non-Impact Printer: An electric device like a copier, laser or ink-jet printer that created images on a surface without contacting it.

Off-Press Proofs: Proofs made by photochemical or digital means in less time and at lower cost than press proofs.

Offset: In printing, the process of using an intermediate blanket cylinder to transfer an image from the image carrier to the substrate. Short for offset lithography. Lithographic printing transfers ink from a plate to a blanket, then from the blanket to paper.

Open Web: Web press without a drying oven, thus unable to print on coated paper.

Overlay: In artwork, a transparent covering over the copy where color break, instructions or corrections are marked. Also, transparent or translucent prints which, when placed one on the other, form a composite picture.

Overprinting: Double printing; printing over an area that already has been printed.

Overrun: In printing, copies printed in excess of the specified quantity.

Padding: Binding printed or blank sheets in units. Base stock is used to separate the units. The pads are secured as a batch, and cement is applied to one side. The units are then separated to form individual tablets.

Page: One side of a sheet of paper.

Page Count: Total number of pages, including blanks and printed pages without numbers.

Page Makeup: In stripping, assembly of all elements to make up a page. In computerized typesetting, the electronic assembly of page elements to compose a complete page with all elements in place on a video display terminal and on film or plate.

Page Proof: Proof taken from each page and proofread as a final check. The galley corrections have been made, and illustrations and footnotes have been arranged in their proper places.

Pagination: In computerized typesetting, the process of sequencing pages automatically to identify its location.

Pallet: Wooden platform used as a base for loading and moving paper and printed products.

Pattern Carbon: Type of carbon that has only selected areas of carbon coverage with the balance remaining a clear brown tissue. Used in the selective transfer of certain information from one paper part to another in snap sets or continuous forms and mailers.

Perfect Bind: To bind sheets by trimming at the spine and gluing them to a wraparound cover.

Perfecting Press: A printing press that prints both sides of the paper in one pass through the press.

Perforate: To cut minute holes in stock in order to facilitate separation of individual units.

Personal Computer: A system that consists of a processing unit, Memory (RAM, ROM), Input devices (keyboard, mouse, scanner, modem), output devices (monitor-color or monochrome, printer, imagesetter).

Pica: Printer's unit of linear measurement. One pica equals 12 points or 1/6 inch.

Pigment: In printing inks, the fine solid particles used to give color, transparency or opacity.

Pinfeed Holes: Marginal punched holes on the sides of continuous forms which are used to feed forms which are used to feed forms evenly through a printer.

PMS: Abbreviation for Pantone Matching System, a check standard trademark for color reproduction and color reproduction materials owned by Pantone, Inc.

Plastic Bind: Books bound with plastic elements in spiral form, inserted through holes punched along the binding side. Comes in selected colors.

Point: Unit of printer's measurement equal to approximately 1/72 of an inch 1/12 of a pica.

PostScript: A computer description language that allows a programmer to create complex pages using a series of commands.

Press O.K.: Refers to customer's approval of color printing at the printing plant as the job is printed.

Prepress: Camera work, stripping, plate making, and other activities by a trade camera service or printer before press work begins. Alternate term for preparation.

Prepress Proofs: See Off-Press Proofs.

Press Check: Event at which test sheets are examined at the press before production run begins.

Press Proofs: In color reproduction, a proof of a color subject made on a printing press, in advance of the production run.

Pressure-Sensitive Paper: Material with an adhesive coating, protected by a backing sheet until used. This process replaces dry gum material which uses moisture activated adhesive.

Print Quality: A term describing the visual impression of a printed piece. In paper, the properties of the paper that affect its appearance and the quality of reproduction. Quality is subjective and is the cause for most problems between customers and printers.

Process Carbon: Refers to any carbon that is perforated, marginally punched or die cut.

Process Colors: In printing, the subtractive primaries; yellow, magenta and cyan, plus black in 4 color process printing.

Process Printing: The printing from a series of two or more halftone plates to produce intermediate color and shades. In four-color process; yellow, magenta, cyan and black.

Progressive Proofs (PROGS): Proofs made from the separate plates in color process work, showing the sequence of printing and the result after each additional color has been applied.

Proof: Test sheet made to reveal errors or flaws, predict results and record how a printing job is intended to appear.

Proofreading: Reading copy to detect typographical or other errors.

Publication: The collection of pages you create by integrating text and graphics.

Punching: Round holes punched in paper or in papers and carbons.

Ream: Five hundred sheets of paper.

Register: In printing, fitting of two or more printing images on the same paper in exact alignment with each other.

Reinforced Punching: Method of reinforcing punched holes by utilizing paper or mylar patches.

Remoistenable Glue: Dry gun adhesive applied to a sheet of paper to form a flap on a continuous mailer form.

Reprints: A reprinting of the original job with no changes.

Reproduction Proof: Proof of a typed form for purposes of photographic reproduction.

Resolution: The degree of precision with which an object is represented. A printer's resolution is determined by number of dots per inch (dpi).

Reverses: Original images in which reproduction has been reversed by a negative working process.

Right-Angle Fold: In binding, a term used for two or more folds that are a 90 degree angles to each other.

Rough Draft: Text material that requires editing and possible reworking before it becomes a final draft.

Saddle Stitch: To bind by stapling sheets together where they fold at the spine.

Scanner: A hardware device that reads information from a photograph, graphic and converts it into a bitmapped graphic. (There are scanners that will scan text, also).

Score: To impress or indent a mark with a string or rule in the paper to make folding easier.

Screen: Piece of film with dots of uniform density, used to make plates that will print screen tints. See *Halftone*.

Self Cover: A cover of the same paper as inside the text pages.

Self Mailer: Printed piece designed to be mailed without an envelope.

Serif: The short cross-lines at the ends of the main strokes of many letters in some type faces.

Sheet Fed Press: Press that prints from flat sheets.

Shrink Wrap: Method of tightly wrapping packages or products in plastic film.

Side Stapled: In binding, to staple the sheets or signatures of a magazine or booklet on the side near the backbone.

Signature: In printing and binding, the name given to a printed sheet after it has been folded.

Skid: A pallet of loose stock, 20,000 to 30,000 sheets, stacked on a pallet, banded and plastic wrapped. Skid can also mean palletized cut stock or finished printed matter off of the printing press.

Snap Set: Multipart form glued together in a common stub, utilizing its own one-time carbon or carbonless paper for purposes of making copies.

Software: Information usually contained on cassette or disk, that make up the instructions for a computer to follow.

Specifications: Complete and precise descriptions of paper, ink, binding, quantity, and other features of a printing job.

Spine: See *Backbone*.

Spiral Binding: A book bound with wires in spiral form inserted through holes punched along the binding side.

Spot Color: A method of assigning and printing colors in a publication.

Spot Varnish: Varnish applied to portions of a sheet.

Stencil: Piece of fabric or film carrying an image for screen printing or mimeograph.

Stock: Paper or other material to be printed.

Stripping: The process of arranging negatives, positives, or copy in proper position on a flat before platemaking.

Stub: Part of a snap set where the papers and/or carbons are glued together.

Subhead: Heading or subdivision of text copy; a subordinate heading to title.

Tabloid: Newspaper about half the size of a regular newspaper.

Tag: Board grade paper used for products such as tags and file folders.

Text: The body matter of a page or book, as distinguished from the headings.

Toner: Imaging material used in electrophotography and some off-press proofing systems. In inks, dye used to tone printing inks, especially black.

Tooth: A characteristic of paper, a slightly rough finish, which permits it to take ink readily.

Trade Customs: Business terms and policies followed by business in the same field and often codified by a trade association and generally accepted by law.

Trade Shop: Printer or other service working primarily for other printing professionals. Trade shops will not work directly for the end-user or agency.

Transfer Tape: Strip of adhesive tape that is applied to paper and used to form adhesive for envelope flaps in continuous mailer forms.

Trim Marks: In printing, marks placed on the copy to indicate the edge of the page.

Typeface/Font: A style of type characterized by its shape, size, weight, width and slope, which makes it distinct from other typefaces.

-Up: In printing, two-up, three-up, etc., refers to imposition of material to be printed on a larger size sheet to take advantage of full press capacity.

Underrun: Production run of fewer copies than the amount specified.

Varnish: A thin, protective coating applied to a printed sheet for protection or appearance. Also, in inkmaking, it can be all or part of the ink vehicle.

Vellum Finish: In paper making, a toothy finish which is relatively absorbent for fast ink penetration.

Watermark: Distinctive design created in paper during manufacturing.

Web: A roll of paper used in web or rotary printing in contrast to cut sheets for sheet fed printing.

Web Press: A press which prints on roll-fed or web-fed paper.

Wire-O Binding: A continuous double series of wire loops run through punched slots along the binding side of a booklet.

With the Grain: Folding or feeding paper into a press parallel to the grain of the paper. This is the preferred method.

Word-Processing: Processing information by manipulating & formatting for specific needs.

Word-Processing Software: An application program that instructs the computer to format text.

Wove Paper: Paper having a uniform unlined surface and a soft smooth finish.

Wrinkles: Creases in paper occurring during printing. In inks, the uneven surface formed during drying.

Xerography: An electrophotographic copying process that uses a corona charged selenium photoconductor surface, electrostatic forces and dry or liquid toner to form an image.

20.15 If You Have A Problem

Unfortunately, printed materials sometimes are of poor quality or do not meet the expectations of the end user. Many things may have contributed to the problem, but generally specifications provided by the agency were poor or misunderstood by the printer. In rare cases the printer just did a poor job. When controversy arises, it is important that agencies follow the following procedures:

- Printed materials should be carefully checked by the agency for compliance to specifications before acceptance. Poor quality or printing that does not meet specifications should not be accepted.
- When printed material is unacceptable, the agency should contact the printer and make the complaint known. Most of the time the agency and the printer can come to an acceptable resolution quickly.
- When meeting with the printer, the agency should have all the information about the printing project available, including records of conversations, copies of correspondence, bidding information, and any other significant data that may provide the necessary documentation for resolving a complaint.
- If a satisfactory resolution with the printer cannot be easily reached, a third party may be called on to offer opinions and make recommendations. The third party should not be an employee of the complaining agency, but a neutral individual with considerable experience in printing and no vested interest in the resolution outcome.
- If an impasse has been reached, the matter should be directed to the Division of Purchasing for review and final resolution.
- Complaints involving statewide contracts or single agency contracts should always be directed to the Division of Purchasing.

20.16 Idaho Statutes Pertaining to Printing

60-101. CONTRACTS FOR STATE PRINTING -- EXECUTION WITHIN STATE --EXCEPTION. All printing, binding (excluding binding for state supported libraries), engraving and stationery work executed for or on behalf of the state, and for which the state contracts, or becomes in any way responsible, shall be executed within the State of Idaho, except as provided in section 60-103, Idaho Code. Provided, however, that this section shall not apply to any compilation, publication or codification of the laws of the state of Idaho.

60-103. EXCEPTION IN CASE OF EXCESSIVE CHARGE -- EXCEPTIONS FOR LACK OF PRODUCTION FACILITIES ON BIDS ON STATE WORK. (a) Whenever it shall be established that any charge for printing, engraving, binding (excluding binding for state supported libraries) or stationery work is in excess of the charge usually made to private individuals for the same kind and quality of work, then the state or county officer or officers having such work in charge shall have power to have such work done outside of said county or state, but nothing in this chapter shall be construed to oblige any of said officers to accept any unsatisfactory work. (b) Any work referred to in section 60-101, Idaho Code, and which is to be executed for or on behalf of the state may be executed outside of this state in any case (1) where the execution of such work shall require the use of a technique or process which cannot be performed through the use of physical production facilities located within this state and the use of such technique or process is essential to a necessary function to be served by the printing, binding, engraving or stationery work required; (2) where, after requests for proposals or bids have been made or notice thereof has been given as required by section 67-5718, Idaho Code, as amended, no bid or proposal is made thereon by any person, firm or corporation proposing to execute such work within this state, or (3) where, after requests for proposals or bids have been made or notice thereof given as required by section 67-5718, Idaho Code, the lowest bid from a person, firm or corporation proposing to execute such work within this state is more than ten percent (10%) more than the lowest bid from a person, firm or corporation proposing to execute such work outside this state.

60-104. PENALTY FOR VIOLATION OF CHAPTER. Any state or county officer either as an official, member of a board, or purchasing agent, who violates any of the above provisions, is guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than [one hundred dollars (\$100.00)] nor more than [five hundred dollars (\$500.00)] for each offense, and shall be liable upon his official bond for the amount of such contract entered into; provided, however, that this section shall not apply and the penalties herein provided for shall not be imposed against any such officer in any case where the person, firm or corporation with whom any such officer contracts or places an order for the performance of any work, as required by section 60-101 or section 60-102[, Idaho Code,] shall have represented in writing to such officer that such work would be executed within a specified county or within this state and such person, firm or corporation shall then permit or cause such work, or any part thereof, to be executed outside of such county or outside of this state contrary to such representation; but any such failure to comply with such representation on the part of any such person, firm or corporation shall render him or it ineligible to bid on or accept, directly or indirectly, any printing, binding, engraving or stationery work for any county or for this state for a period of one (1) year from the date of the contract or order with respect to which such failure occurred.

60-202. REQUIRED INFORMATION. The following information shall be included adjacent to the identification of the agency responsible for the publication: date, publication identification or sequence number, and program code of the program responsible for the publication. This information is to be placed and printed in an appropriate manner so as to be easily discernible and readable. For the purpose of cost accounting and review, any state agency program expending funds for publishing materials shall maintain, for audit purposes, records containing the total cost of printing each publication, whether by the state or on bid, the number printed, the intended audience and a justification.

33-2510. STATE LIBRARIAN -- DEPOSITORY FOR PUBLIC DOCUMENTS -- DISTRIBUTION. It shall be the duty of the head of every agency, board, bureau, commission or department of the state of Idaho, including all state supported institutions of higher education in Idaho, to deposit with the librarian of the Idaho state library for use and distribution to the academic, regional public, special libraries of Idaho, the Library of Congress, and to others within the discretion of the state librarian twenty (20) copies of all documents, reports, surveys, monographs, serial publications, compilations, pamphlets, bulletins, leaflets, circulars, maps, charts or broadsides of a public nature which it prints, mimeographs or otherwise reproduces for public distribution.

67-2349. PREFERENCE FOR IDAHO SUPPLIERS FOR PURCHASES. To the extent permitted by federal laws and regulations, whenever the state of Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract for purchase of any materials, supplies or equipment, the bidder domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible bidder domiciled in Idaho as would be required for such an Idaho domiciled bidder to succeed over the bidder domiciled outside Idaho on a like contract being let in his domiciliary state. For the purposes of this section, any bidder domiciled outside the boundaries of the state of Idaho may be considered as an Idaho domiciled bidder, provided that there exists for a period of one (1) year preceding the date of the bid a significant Idaho economic presence as defined herein. A significant economic presence shall consist of the following: (a) That the bidder maintain in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and (b) If a corporation be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

21. ETHICS AND VENDOR RELATIONSHIPS

All state employees are involved in business transacted by government in one form or another. Especially so are those professional purchasers and other agency personnel who purchase items and services. Taxpayers, state agencies, bidders, contractors and others involved in the conduct of state business have a stake in the integrity and ethical performance of state employees. The State of Idaho has extensive statutes and purchasing rules referenced in this publication. These are safeguards put in place to preserve that integrity by helping to avoid improper actions, or the appearance of improper actions by government personnel and by suppliers. The following are a few of the safeguards and prohibitions that protect you as a taxpayer and a government employee:

21.1 Safeguards

- Public Information Availability - complete purchasing records and published rules and procedures, with public access (I.C. 9-338, I.C. 67-5725)
- Conflict of Interest prohibition regarding the holding of contracts or selling to the state property or supplies by state employees (I.C. 67-5726)
- Prohibition regarding the influencing or conspiring to influence public purchasing decisions and contract awards (I.C. 67-5726). Attempts at influence may include kickbacks and bribes, peddling or payment of a fee, back-door selling, hard-sell tactics, fraternization, or offering gifts to avoid following published procedures or gain advantages
- Circumventing Purchasing Authorization Prohibition that prohibits efforts by using agencies to obtain products or services by avoiding the competitive process such as splitting purchases, creating false emergency situations and non-use of statewide contracts (I.C. 67-5726, I.C. 67-5717)
- Appeals and Resolution of Complaints Processes- published procedures for resolving disputes (I.C. 67-5733, IDAPA 38.05.01.700)
- Audits - periodic and systematic review of purchasing procedures for compliance with state statutes, policies and rules that govern the purchasing process

Each state employee, classified and nonclassified, has a *personal responsibility* to conduct government business in an ethical manner and assure the integrity of the state purchasing and procurement processes.

21.2 NIGP Code of Ethics

The following are the purchasing ethics and guidelines published by the National Institute of Governmental Purchasing, Inc.(NIGP), an organization dedicated to increasing the professionalism of public purchasing through education and certification, technical information and services, and research and publications. The Institute believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization.

- Seeks or accepts a position as head or employee only when fully in accord with the professional principles applicable thereto, and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.
- Believes in the dignity and worth of the service rendered by the organization and the societal responsibilities assumed as a trusted public servant.
- Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.
- Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
- Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
- Believes that members of the Institute and its staff should at no time or under any circumstances accept directly or indirectly, gifts, gratuities, or other things of value from suppliers which might influence or appear to influence purchasing decisions.
- Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.
- Resists encroachment on control of personnel in order to preserve integrity as a professional manager. Handles all personnel matters on a merit basis. Politics, religion, ethnicity, gender and age carry no weight in personnel administration in the agency being directed or served.
- Seeks or dispenses no personal favors. Handles each administrative problem objectively and emphatically without discrimination.
- Subscribes to and supports the professional aims and objectives of the National Institute of Governmental Purchasing, Inc.

21.3 Guidelines to the Code of Ethics

Responsibility to your employer

- Follow the lawful instructions or laws of the employer.
- Understand the authority granted by the employer.
- Avoid activities which would compromise or give the perception of compromising the best interests of the employer.
- Reduce the potential for any charges of preferential treatment by actively promoting the concept of competition.
- As agents for the employer, obtain the maximum benefit for funds spent.

Conflict of Interest

- Avoid any private or professional activity that would create a conflict between your personal interest and the interests of your employer.

Perception

- Avoid the appearance of unethical or compromising practices in relationships, actions and communications.
- Avoid noticeable displays of affection which may give an impression of impropriety.
- Avoid holding business meetings with suppliers outside the office. When such meetings do occur, the meeting location should be carefully chosen so as not to be perceived as inappropriate by other persons in the business community or by your peers.

Gratuities

- Never solicit or accept money, loans, credits or prejudicial discounts, gifts, entertainment, favors or services from your present or potential suppliers, which might influence or appear to influence purchasing decisions.

21.4 Vendor Relationships

Developing and maintaining good relationships with our suppliers is important. Whenever a vendor (or agency) fails to meet the requirements of a contract or purchase order the problem needs to be discussed and resolved to everyone's satisfaction. This will help prevent future problems and maintain good working relations. Most minor problems can be worked out with a simple call or visit, but if not, please feel free to bring the matter to the attention of the Division of Purchasing for assistance in resolving disputes. The following are a few things to keep in mind when dealing with vendors:

- Maintain and practice, to the highest degree possible, business ethics, professional courtesy, and competence in all transactions.
- Preclude from showing favoritism or being influenced by suppliers through the acceptance of gifts, gratuities, loans or favors.
- Adhere to and protect the supplier's business and legal rights to confidentiality for trade secrets, and other proprietary information.

21.5 Timely Processing of Invoices

The internal procedures that government goes through to process payments to vendors can be quite confusing and time consuming. Although technology is constantly showing us better and faster ways to do business with such things as e-mails, faxes, internet access and electronic fund transfers, the human element still comes into play. It is our individual responsibility as government employees to do whatever we can to process vendor invoices in a timely manner.

21.5.1 Idaho Statute Regarding Invoice Processing

Idaho Code 67-5735 states, in part, that "Within ten (10) days after the property is acquired.....the acquiring agency shall complete all processing...to permit the contractor to be reimbursed. Within ten (10) days of receipt of the document...the State Auditor shall cause a warrant to be issued....".

22. REPORTING PURCHASES

22.1 Reporting Purchases from Contracts

Purchases from Division of Purchasing issued Contract Purchase Orders (CPO), Blanket Purchase Orders (BPO), and Statewide Blanket Purchase Orders (SBPO) are reported through the State Controller's STARS accounting system. When entering Encumbrance/Expenditure Transaction Entry into the STARS system, enter the CPO, BPO, or SBPO number in the MPC (Multi-Purpose Code) field.

22.1.1 Contract Prefix Definitions

The new Division of Purchasing automated purchasing system does not use the word "contract", instead it calls all documents "purchase orders". To help alleviate confusion, new purchase order prefixes are used for contracts as follows:

CPO A Contract Purchase Order. A CPO is used for leases, rentals, services, maintenance agreements, purchase agreements, and time purchases. The CPO is intended to cover recurring transactions such as monthly invoices, or scheduled deliveries where you don't issue a new agency purchase order every time. CPOs are issued by the Division of Purchasing on behalf of a single agency.

BPO A Blanket Purchase Order. This is just new wording for single agency term or requirement contracts (Indefinite Delivery Indefinite Quantity type) and price agreements. Blanket Purchase Orders are contracts that establish basic ordering procedures, terms and conditions, and pricing. The agency then issues individual purchase orders to the vendor against the BPO when supplies or services are needed. BPOs result from bids issued by the Division of Purchasing on behalf of a single agency.

SBPO Same as BPO above, but this means Statewide Blanket Purchase Order. For example, a statewide contract for office supplies might be SBPO 32 or SBPO 199 rather the old number 94-K129J-12-2. SBPOs result from bids issued by the Division of Purchasing on behalf of multiple agencies.

22.2 Agency Delegated Purchasing Monthly Reporting

At the end of each month, the agency will prepare and forward to the Division of Purchasing a report of all purchasing activity between \$1,500 and the limits of the agency's delegated authority. Included shall be all purchases conducted pursuant to the delegation of Purchasing Authority from the Division of Purchasing and such other special reporting requirements that may be required from the Division of Purchasing. Do NOT include agency purchases from State contracts or Division of Purchasing issued Emergency Purchasing Authority (SEPA) numbers as these are separately reportable through the State Controller's STARS accounting system. Also, , Do not include Division of Purchasing issued Purchase Orders.

The report shall be in electronic format using the Excel spreadsheet model provided by the Division of Purchasing. Columns are provided to describe the PO Number and/or Requisition Number, Item Description, Number of Quotes sent/received, Dollar Amount, In-state/Out of State, Vendor Name, and Reason if noncompetitive.

At a minimum, the following items will be included in the monthly report:

1. All **commodity/service** purchases between \$1,500 and the agency purchasing limit.
2. All Professional or Consulting **Services** between \$1,500 and \$25,000. This includes competitive or non-competitive professional or consulting services.
3. All Information Technology (IT) **Services** between \$1,500 and \$25,000. This includes IT related services for consulting, computer and/or software maintenance services of one year or less in duration, training, software programming, etc.
4. All Departmental Emergency Purchasing Authority (**DEPA**) purchases between \$1,500 and the agency's DEPA limit.
5. All **Unscheduled Equipment Repairs** between \$1,500 and \$5,000 (including non-competitive). Reasons for Non-Competitive Purchases include:
 1. "IT" (Information Technology) for IT commodity purchase between \$1,500 and \$2,500 or IT purchased Services between \$1,500 and \$25,000.
 2. "P&C" (Professional or Consulting) services between \$1,500 and \$25,000.
 3. "Repairs" for non-competitive unscheduled equipment repairs between \$1,500 and \$5,000.
 4. "DEPA" for agency delegated Departmental Emergency Purchasing Authorizations.
 5. "CI" for any purchase exceeding \$1,500 from Correctional Industries.
 6. "FED" for any purchase exceeding \$1,500 from the Federal Government or any agency thereof.
 7. "IACRP" for any purchase of commodities/services exceeding \$1,500 from rehabilitation agencies certified by the Idaho Association of Community Rehabilitation Programs.
 8. "Exempt" for any non-competitive purchase not otherwise classified and meeting the requirements of Rule IDAPA 38.05.01.051.09.

Month _____ Department Name _____

Department Name_____

[illegible]

* Non-Competitive Codes: IT, P&C, Repairs, DEPA, CI, FED, IACRP, or Exempt

23. SURPLUS PROPERTY DISPOSAL AND TRADE-INS

23.1 State Board of Examiners Policy, Instructions, and Form

Guidelines for Disposal and Sale of Surplus Personal Property are created and approved by the State Board of Examiners. For more information please contact Keith Johnson, Chief Deputy, Rex Reagan at 334-3100 in the State Controller's Office.

[CLICK HERE](#) to access the most current policy guidelines and procedures

[CLICK HERE](#) to download the most current Property Disposal Form and Instructions in Excel format.

23.2 Trade-Ins

Idaho Code allows sale, trade-in, or exchange of state personal property by exchanging the same in part payment for new property. Specifically, §67-5722, Idaho Code, reads in part as follows:

"...Exchange of property will be permitted only when it is determined by the administrator of the division of purchasing that all other methods of disposal of the property sought to be exchanged will yield a lesser monetary return to the state."

Property to be exchanged (traded) in part payment for new property is **not surplus** property (and thus subject to the Board of Examiners guidelines). However, the *State Property Disposal Authorization Request* form is to be used for trade-in property. DO NOT combine property items subject to other disposal methods (sale, auction, etc.) on the same form with the trade-in property items.

A **written justification** for the agency's determination that trade-in is the best method of disposal must accompany the property disposal authorization request form. The disposal form and justification are to be sent **directly to the Division of Purchasing**, not the Board of Examiners. An approved copy will be returned for your file.

Trade-ins may be used in a bidding situation or against purchases from an existing state contract.

23.3 State Statutes Pertaining to Surplus Property Disposal and Trade-Ins

67-5722. SALE, TRADE-IN OR EXCHANGE OF STATE PERSONAL PROPERTY. Whenever any agency owns any property no longer economical to use, the administrator of the division of purchasing may dispose of such property by exchanging the same in part payment for new property, as provided for in this section. The administrator of the division of purchasing shall include in his request for bids a full description of the property to be exchanged as part payment and shall permit each registered vendor to examine the same, and the contract shall be awarded on the basis of net cost to the state after allowance for the property to be exchanged in part payment. In addition, the administrator of the division of purchasing may permit an exchange of property in part payment for new property acquisitions from contracts for the same or similar

property. Exchange of property will be permitted only when it is determined by the administrator of the division of purchasing that all other methods of disposal of the property sought to be exchanged will yield a lesser monetary return to the state. In accordance with the internal management policies, guidelines or instructions of the board of examiners, the head of any agency may declare as surplus any item of personal property.

67-5732A. SALE OF SURPLUS PROPERTY AUTHORIZED. Whenever the head of any commission or department of state government, or any institution of the state, or any elected state official, has under their jurisdiction or control, any personal property belonging to the state which, in their judgment, is of no further use to the state or to such department, commission, institution or state office, they may, sell, in the name of the state, such personal property at public sale. Provided, that where the reasonable value of such property exceeds the sum established by the internal management policies, guidelines or instructions of the state board of examiners, the same will be sold at public auction or sold after receipt of sealed bids, to the highest responsible bidder, after thirty (30) days of notice of such sale, giving the time and place and any sale conditions thereof, published in a newspaper in the county where such property is to be sold, or if no newspaper is published in the county where such sale is to be held, one (1) such notice shall be posted at the place of sale. All funds received from sales of surplus personal property must be deposited into the state treasury and credited to the account of the disposing agency less the cost of the sale. The board of examiners may authorize the sale or transfer of surplus state personal property to city, county, school district, or any other public agency without public notice and without public sale, provided the board has determined that it is in the best public interest.

23.4 Code of the Federal Register, Internal Revenue Service

26 CFR 1.501(c)(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 CFR 1.501(c)(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization - (A) organized in the United States or any of its possessions, (B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

24. TERMS AND CONDITIONS

24.1 Standard Conditions and Instructions to Bidders

Standard Idaho Terms and Conditions are used for all purchases and contracts whether solicited by an Invitation To Bid or Request For Proposal. The most current information is available on the Idaho Purchasing home page. [Click here to access](#). Additional Special Terms and Conditions are included with the ITB or RFP as necessary.

24.2 Standard Contract Terms and Conditions

1. **TERMINATION:** The State may terminate the Agreement (and/or any order issued pursuant to the Agreement) when the Contractor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days, after receipt of such notice. If the Agreement is terminated for default or non-compliance, the Contractor will be responsible for any direct costs and/or damages incurred by the State for placement of a new contract. The State, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary.
2. **RENEWAL OPTIONS:** Upon mutual agreement by both parties (unless otherwise modified by a special contract term, condition, or specification), the Agreement may be extended under the same terms and conditions of this Agreement for one (1) year intervals or the time interval equal to the original contract period.
3. **PRICES:** Prices shall not fluctuate for the period of the Agreement, unless otherwise specified by the State in the bidding documents or other terms of the Agreement. Product prices shall remain valid for the time of the original order date, including change orders that may extend delivery beyond the original delivery date. Prices include all costs normally associated with shipping and delivery to the F.O.B. destination address.
4. **CHANGES/MODIFICATIONS:** Changes of specifications or modification of this Agreement in any particular can be effected only upon written consent of the Administrator, Division of Purchasing, but not until any proposed change or modification has been submitted to him in writing, signed by the party proposing the said change.
5. **CONFORMING GOODS AND/OR SERVICES:** The goods and/or services shall minimally conform in all respects with the specifications as indicated in the State's bid solicitation documents. In event of nonconformity, and without limitation upon any other remedy, the State shall have no financial obligation in regard to the non-conforming goods and/or services.
6. **OFFICIAL, AGENT AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE:** It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Idaho be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement. This section shall not apply to any remedies in law or at equity against any person or entity that exist by reason of fraud, misrepresentation or outside the terms of this Agreement.

7. **CONTRACT RELATIONSHIP:** It is distinctly and particularly understood and agreed between the parties hereto that the State of Idaho is in no way associated or otherwise connected with the performance of any service under this Agreement on the part of the Contractor or with the employment of labor or the incurring of expenses by the Contractor. Said Contractor is an independent contractor in the performance of each and every part of this Agreement, and solely and personally liable for all labor, taxes, insurance, required bonding and other expenses, except as specifically stated herein, and for any and all damages in connection with the operation of this Agreement, whether it may be for personal injuries or damages of any other kind. The Contractor shall exonerate, indemnify and hold the State of Idaho harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, workman's compensation and income tax laws with respect to the Contractor or Contractor's employees engaged in performance under this Agreement. The Contractor will maintain any applicable workman's compensation insurance and will provide certificate of same if requested. There will be no exceptions made to this requirement and failure to provide a certification of workman's compensation insurance may, at the State's option, result in cancellation of this Agreement or in a contract price adjustment to cover the State's cost of providing any necessary workman's compensation insurance. The State does not assume liability as an employer.
8. **ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE:** Acceptance of this Agreement binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964 in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No other wise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. The Contractor must include this provision in every subcontract relating to purchases by the State to insure that subcontractors and vendors are bound by this provision.
9. **TAXES:** The State of Idaho is generally exempt from payment of state sales and use taxes and from personal property tax for property purchased for its use. The State is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service. Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State of Idaho, it shall be solely and absolutely responsible for the payment of those taxes. If, after the effective date of this Contract, an Idaho political subdivision assesses, or attempts to assess, personal property taxes not applicable or in existence at the time this Contract becomes effective, the State of Idaho will be responsible for such personal property taxes, after reasonable time to appeal. In no event shall the State of Idaho be responsible for personal property taxes affecting items subject to this Contract at the time it becomes effective.
10. **SAVE HARMLESS:** Contractor shall indemnify and hold harmless the State of Idaho from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney fees, caused by or that arise from the negligent or wrongful acts or omissions of the Contractor, its employees, agents, or subcontractors under this Agreement that cause death

or injury or damage to property or arising out of a failure to comply with any state or federal statute, law, regulation or act. IN NO EVENT WILL THE CONTRACTOR BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. Contractor shall have no indemnification liability under this section for death, injury, or damage arising out of the negligence or misconduct of the State.

11. **ORDER NUMBERS:** Agreement order numbers or purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
12. **CONTRACTOR RESPONSIBILITY:** The Contractor shall be required to assume responsibility for production and delivery of all material and services offered in its bid or proposal, whether or not the Contractor is the manufacturer or producer of such material or services. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of items selected.
13. **SUBCONTRACTING:** Unless otherwise allowed by the State in the Request for Proposal, the Contractor shall not, without written approval from the Administrator, Division of Purchasing, enter into any subcontract relating to the performance of this Agreement or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of responsibility for the professional and technical accuracy and adequacy of the work. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Agreement by Contractor's subcontractor or its sub-subcontractor.
14. **STATE OF IDAHO MINIMUM WAGE LAW:** It will be the responsibility of the Contractor to fully comply with the State of Idaho code regarding the minimum wage law for residents hired to help on projects and jobs in Idaho.
15. **COMMODITY STATUS:** It is understood and agreed that any item offered or shipped shall be new and in first class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by the State in the bidding or specification documents. Demonstrators, previously rented, refurbished, or reconditioned items are not considered "new" except as specifically provided in this section. "New" means items that have not been used previously and that are being actively marketed by the manufacturer or Contractor. The items may contain new or minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer's new product standards. The items must have the State of Idaho as their first customer and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). The new items offered must be provided with a full, unadulterated, and undiminished new item warranty against defects in workmanship and materials. Unless modified by other specifications in the bidding documents, the warranty is to include replacement, repair, and any labor for the period of time stated by the Contractor in the bid response or the period of time required by other specifications, whichever is longer.
16. **SHIPPING, DELIVERY, INSTALLATION AND ACCEPTANCE:** All orders will be shipped directly to the ordering departments at the location specified, on an F.O.B. Destination freight prepaid and allowed basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. "F.O.B. Destination", unless otherwise specified in the Agreement or bid solicitation documents, shall mean delivered to the State Agency Receiving Dock or Store Door Delivery Point, unless a different location is specified by the State in the bid solicitation documents. The Contractor shall deliver all orders as specified and complete installation, if required, within the number of days after receipt of order (A.R.O.) offered, unless otherwise specified in the bid

documents. Time for delivery commences at the time the order is received by the Contractor. When the purchase price does not include delivery, acceptance shall occur fourteen (14) days after delivery, unless the State has notified the Contractor in writing that the order does not meet the State's bidding document requirements or otherwise fails to pass the Contractor's established test procedures or programs. When installation is included, acceptance shall occur upon completion of installation. If an order is for support or other services, acceptance shall occur fourteen (14) days after completion, unless the State has notified the Contractor in writing that the order does not meet the State's bidding document requirements or otherwise fails to pass the Contractor's established test procedures or programs.

17. **RISK OF LOSS:** Risk of loss and responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under this Agreement. If installation is requested by the State or specified in the State's bidding documents, pricing shall include all charges associated with a complete installation at the location specified.
18. **INVOICING:** ALL INVOICES are to be sent directly to the ORDERING DEPARTMENT ONLY. Agreement number and/or purchase order numbers are to be shown on all invoices. In no case are invoices to be sent to the Division of Purchasing.
19. **ASSIGNMENTS:** No contract or order or any interest therein shall be transferred by the Contractor to whom such contract or order is given to any other party, without the approval in writing of the Administrator, Division of Purchasing. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the State. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the State.
20. **PROHIBITED CONTRACTS:** No member of the legislature or officer or employee of any branch of the state government shall directly himself, or by any other person execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the State of Idaho, if made by, through or on behalf of the department in which he is an officer or employee or if made by, through or on behalf of any other department unless the same are made after competitive bids. Idaho Code Section 67-5726(1).
21. **PAYMENT PROCESSING:** Idaho Code Section 67-5735 reads as follows: "Within ten (10) days after the property acquired is delivered as called for by the bid specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be reimbursed according to the terms of the bid. Within ten (10) days of receipt of the document necessary to permit reimbursement of the contractor according to the terms of the contract, the State Controller shall cause a warrant to be issued in favor of the contractor and delivered."
22. **GOVERNMENT REGULATIONS:** Contractor guarantees that all items meet or exceed those requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection Agency, or other regulatory agencies.
23. **HOT GOODS:** The Contractor hereby certifies that all goods provided under this Agreement are produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and the regulation and orders of the United States Department of Labor issued under Section 14 thereof and other applicable provisions of the Fair Labor Standards Act.

24. YEAR 2000 WARRANTY: The Contractor warrants that each hardware, software, and firmware product (or item containing a hardware, software, and firmware component) delivered under this Agreement shall be able to accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations, without manual intervention, when used in accordance with the product documentation provided by the Contractor. If the Agreement requires that hardware, software and firmware products must perform as a system, then this warranty shall apply to those products as a system. This warranty shall be subject to the general warranty provisions of this Agreement, provided that notwithstanding any provision to the contrary, the remedies available to the State under this warranty shall include immediate repair or replacement of any product (i) whose non-compliance is discovered and made known to the Contractor in writing within ninety (90) days after acceptance; or (ii) whose non-compliance is not reasonably detectable by the State in the normal course and that does fail to accurately process date data as set forth above from, into or between the twentieth and twenty-first centuries. The repair or replacement required by the previous provision shall be without interruption to the ongoing business of the State and it is hereby agreed that time is of the essence. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this Agreement with respect to defects other than Year 2000 performance.

25. PATENTS AND COPYRIGHT INDEMNITY

- a) Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States patent, copyright, trade secret, or trademark for items purchased under this Agreement. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the State of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and (iii) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.
- b) Contractor shall have no liability to the State under any provision of this clause with respect to: any claim of infringement that is based upon (i) the combination or utilization of the item(s) with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications; (ii) the modification by the State of the item(s); or (iii) the use of the item(s) not in accordance with Contractor's previously established specifications.
- c) Should the item(s) become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States patent, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the item(s), to replace or modify the item(s) so that it becomes non-infringing, or to grant the State a full refund for the purchase price of the item(s) and accept its return.

26. CONFIDENTIAL INFORMATION: Pursuant to this Agreement, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other information that the State regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the State. Contractor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose Confidential Information or any advice given by it to the State to any third party, except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then, only upon timely notice to the State. The State may require that

Contractor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. Confidential Information shall be returned to the State upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. "Confidential Information" shall not include data or information that:

- a) Is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;
- b) Becomes generally available to the public other than as a result of disclosure by Contractor; or
- c) Becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

- 27. **USE OF THE STATE OF IDAHO NAME:** Contractor agrees that it will not, prior to, in the course of performance of this Agreement (or any order), or thereafter use the State's name in any advertising or promotional media as a customer or client of Contractor without the prior written consent of the State.
- 28. **APPROPRIATION BY LEGISLATURE REQUIRED:** It is understood and agreed that the State is a government entity and this Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. The State reserves the right to terminate this Agreement in whole or in part (or any order placed under it) if, in its judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments. All affected future rights and liabilities of the parties hereto shall thereupon cease within ten (10) days after notice to the Contractor. It is understood and agreed that the State's payments herein provided for shall be paid from Idaho State Legislative appropriations and, in some instances, direct federal funding.
- 29. **SPECIAL TERMS GOVERN:** In the event of any conflict between these standard terms and conditions and any special terms and conditions that are otherwise included in the bid solicitation, the special terms and conditions will govern.
- 30. **FORCE MAJEURE:** Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the Contractor shall notify the Administrator, Division of Purchasing promptly in writing of any cause for delay and the Administrator, Division of Purchasing concurs that the delay was beyond the control and without the fault or negligence of the Contractor. If reasonably possible, the Contractor shall make every reasonable effort to complete performance as soon as possible.
- 31. **GOVERNING LAW AND SEVERABILITY:** This Agreement shall be construed in accordance with, and governed by the laws of the State of Idaho. Except to the extent the provisions of the Agreement are clearly inconsistent therewith, the Agreement shall also be governed by the applicable provisions of the Idaho Uniform Commercial Code (IUCC). To the extent this Agreement entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the IUCC, except where deeming such services as "goods" would result in a clearly unreasonable interpretation. Any action to enforce the

provisions of this Agreement shall be brought in state district court in Ada County, Boise, Idaho. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.

32. **ENTIRE AGREEMENT:** This Agreement, with the State's Invitation to Bid or Request for Proposal, including any addenda (such deemed incorporated by reference) and the bid response, to the extent it is not in conflict with the bid specifications (such document deemed incorporated by reference), constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous bids or proposals, both oral and written, discussions, representations, commitments, and all other communications between the parties. Where terms and conditions specified in the State's bid documents or the Contractor's response differ from those specifically stated in this Agreement, the terms and conditions of this Agreement shall apply. This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties. The terms of the Agreement shall prevail notwithstanding any variances with the terms and conditions of any other order submitted by the State of Idaho.

24.3 Special T&Cs for Request for Proposals

MULTIPLE PROPOSALS: Unless otherwise prohibited in other bidding documents, a vendor may submit more than one proposal. At least one of the proposals must be complete and comply with all instructions of this Request for Proposals. However, the additional proposals may be in an abbreviated form following the same format, but providing only information different in detail from that contained in the complete proposal.

SPECIFICATIONS: In order to be considered for evaluation, proposals submitted in response to this Request for Proposal must conform to all stated specifications. If a proposal substantially conforms to all specifications, though not strictly responsive, it may be accepted if the variance or minor deviation is inconsequential. A variance will be considered inconsequential if it cannot have affected the amount of the bid and cannot have given the bidder an advantage or benefit not allowed other bidders. A variance will be considered major when such variance or deviation frustrates the competitive bidding process. The Administrator for the Division of Purchasing shall have the right to reject any and all bids when the Administrator determines that the bid deviates to a major degree from the bid specifications.

BEST AND FINAL OFFERS: The State may, at its sole option, either accept a bidder's initial proposal by award of a contract or enter into discussions with bidders whose proposals are deemed to be reasonably susceptible of being considered for award. Bidders should submit their best proposals initially as there is no guarantee the State will conduct discussions. During the initial evaluation process, bidders' proposals deemed incapable of meeting the scope and needs of the RFP in a satisfactory manner may be removed from further consideration during any best and final offer phase.

At the public bid opening, only the names of the bidders will be announced and no other information will be made public until after a notice of intent to award is given. During the evaluation phase and any discussions conducted, adequate procedures will be used to ensure that the contents of the bidders' proposals are kept under strict security and disclosure of any information from competing proposals is prohibited.

If discussions are deemed necessary, they may be used to determine in greater detail the bidder's qualifications, explore with the bidder the scope and nature of the project, determine that the bidder will make available the necessary personnel and facilities to perform within the required time, or discuss compensation which is fair and reasonable. The primary purpose of any

such discussions will be for clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

The State will schedule a time for the discussions and provide a date and time for receipt of best and final offers. If during discussions there is a need for clarification or change of the RFP it shall be amended to incorporate such clarification or change.

Bidders will be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. If the bidder does not submit a notice of withdrawal or a best and final offer, once a date and time has been established for receipt of best and final offers, the bidder's initial or immediate previous offer will be construed as its best and final offer.

SUBCONTRACTING: Unless otherwise allowed by the State in the Request for Proposal, the Contractor shall not, without written approval from the Administrator, Division of Purchasing, enter into any subcontract relating to the performance of this Agreement or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of responsibility for the professional and technical accuracy and adequacy of the work. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Agreement by Contractor's subcontractor or its sub-subcontractor.

INSURANCE

a. For the duration of the Agreement and until all work specified in the Agreement is completed, the Contractor shall maintain in effect all insurance as required herein and comply with all limits, terms and conditions stipulated therein. Within two (2) weeks after notification of award, the apparent successful bidder will provide certificate(s) of the insurance required by the State's bidding documents and/or as specified below.. There will not be provisions for exceptions to this requirement. Failure to provide the certificates of insurance within the two (2) week period may, at the State's discretion, result in rejection of the bid and/or cancellation of the Agreement. Work under this Agreement shall not commence until evidence of all required insurance and bonding is provided to the State of Idaho. Evidence of such insurance shall consist of a completed copy of the certificate of insurance signed by the insurance agent for the Contractor and returned to the State. If for any reason, any material change occurs in the coverage during the course of this Agreement, such change will not become effective until 30 days after the State has received written notice of such change. The amount of such insurance shall be not less than:

- | | |
|---|--------------|
| (1) Worker's Compensation Insurance in amounts as required by statute. | |
| (2) Automobile Liability including non-owned and hired | \$500,000.00 |
| (3) Commercial General Liability or Comprehensive General Liability Insurance including Contractual Liability | \$500,000.00 |
| (4) Professional Liability | \$500,000.00 |

b. The certificate must contain a provision that, should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the State, by certified or registered mail, receipt requested.

ACCEPTABLE EMPLOYEES: Contractor shall provide employees experienced in and qualified to perform specified tasks. Unless waived by the State, the Contractor and the State will jointly agree upon those employees who are to perform services under this Agreement. In any event, the State shall be the sole judge of employee performance. If, for any reason, the State deems any contract employee's performance is unsatisfactory, the Contractor shall upon written or verbal request by the State, immediately remove such employee. The Contractor shall replace such employee within twenty four (24) hours of notification unless a different time frame is agreed upon. Failure to provide experienced and qualified employees acceptable to the State may be cause for immediate termination of the Agreement.

24.4 Special T&Cs for Computer Hardware & Software

The State of Idaho, by and through its statutory agent, the Administrator of the Division of Purchasing, within the Department of Administration, (the "State"), on behalf of the State of Idaho Agency named elsewhere in this Agreement (the "State Agency"), subject to the following terms of this Agreement (the "Agreement"), contracts with the Contractor named elsewhere in this Agreement (the "Contractor"), for the purchase (including installment purchase) or lease of personal property items set forth in the Schedule attached hereto and incorporated in full, hereafter referred to as "Products." These Hardware and Software Terms and Conditions are in addition to the State of Idaho's Standard Contract Terms and Conditions found on the Internet at <http://www2.state.id.us/adm.purchasing>, incorporated into and made part of this bid and any ensuing contract. In the event of any conflict between these Hardware and Software Terms and Conditions and the Standard Terms and Conditions, these Hardware and Software Terms and Conditions shall prevail

1. DEFINITIONS. As used in this Agreement.

A. "Commercial Computer Software" means Computer Software that is used regularly for other than government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices (i.e., that can be considered "shrinkwrap") or Computer Software that does not constitute Special Products and is regularly sold, licensed or leased by the Contractor to governmental entities to meet governmental requirements (i.e., that can be considered "shrinkwrap").

B. "Computer" means a Data processing device capable of accepting Data, performing prescribed operations on the Data, and supplying the results of these operations; for example, a device that operates on discrete Data by performing arithmetic and logic processes on the Data, or a device that operates on analog Data by performing physical processes on the Data.

C. "Computer Data Base" means a collection of Data in a form capable of being processed and operated on a Computer.

D. "Computer Program" means a series of instructions or statements in a form acceptable to a Computer, processor, or controller that is designed to cause the Computer, processor, or controller to execute an operation or operations. Computer Programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and ADPE Maintenance/Diagnostics programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs and the like. Computer Programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

E. "Computer Software" or "Software" means Computer Programs and Computer Data Bases.

F. "Computer Software Documentation" means technical Data, including Computer listings and printouts, in human-readable form that:

- (1) Documents the design or details the Computer Software;
- (2) Explains the capabilities of the Software; or
- (3) Provides operating instructions for using the Software to obtain desired results from a Computer.

- G. "Data" means recorded information, regardless of form or method of recording.
 - H. "Hardware" includes Computers, printers, attached equipment or other equipment utilized for the State's intended purpose.
 - I. "Products" includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts and upgrades.
 - J. "Special Products" are Products that have been modified by mutual agreement to meet the State's requested changes.
 - K. "Support" includes Hardware maintenance and repair (outside any required by any applicable warranty), Software updates, maintenance and support services, consulting, training and other support services provided by or through Contractor.
2. **SAVE HARMLESS.** Subject to the limits set forth in Sections 7.B.(6) and 7.C of this Agreement, the Contractor shall indemnify and hold harmless the State of Idaho from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorneys' fees, that are caused by or arise from, the negligent or wrongful acts or omissions of the Contractor and its Subcontractors under this Agreement and that cause death or injury or damage to property or that arise out of a failure to comply with any state or federal statute, law, regulation or act.
3. **SOFTWARE LICENSE.** In this section on Software Licenses, the term "Use" means storing, loading, installing, executing or displaying Software on a Computer, processor, or controller, or making a copy of Software for archival or backup purposes only.
- A. Contractor grants State a personal, non-transferable and non-exclusive right to use, in object code form, all Software and related documentation furnished to State under this Agreement. This grant shall be limited to use with the Hardware or Products for which the Software was obtained, or on a temporary basis, on back-up equipment when the original Hardware or Product is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed to in writing by Contractor.
 - B. State agrees to use its best efforts to see that its employees and users of all Software licensed hereunder comply with the terms and conditions set out in this Agreement. State also agrees to refrain from taking any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent of the Software.
 - C. State is permitted to make a single archive copy of Software. Any copy must contain the same copyright notice and proprietary markings that are on the original Software.
 - D. Use of Software on any Products other than that for which it was obtained, removal of Software from the United States, or any other material breach shall automatically terminate this license.
 - E. The terms and conditions of a standard software license agreement applicable to Commercial Computer Software acquired under this Agreement may apply to the extent such terms or conditions do not materially change the terms or conditions of this Agreement. In the event of any conflict between the terms or conditions of this Agreement and the Contractor's standard software license agreement, the terms or conditions of this Agreement shall take priority and control, provided, however, without limitation, that the provisions of this Agreement relating to choice of law found at Section 31 of the State's Standard Contract Terms and Conditions, the remedy for copyright infringement found at Section 25 of the State's Standard Contract Terms and Conditions

and the Exclusive Remedies and Limitation of Liability at Section 7 herein shall apply in all cases and supersede any provisions contained in Contractor's software licensing agreement or any other agreement.

F. State's license includes the right to updates, upgrades, or other enhancements. The Contractor reserves the right to an additional license fee for such update, upgrades, or other enhancements.

G. Software bundled with any other Product may be used only with the Product and with the configuration in which the Product is sold by Contractor or subsequently upgraded by Contractor.

H. State's license infers no title or ownership in the Software and no rights in any associated source code, unless otherwise agreed to in writing by the parties, and will not be construed as a sale of any ownership rights in Software, unless such Software is being developed or modified exclusively as a Special Product in response to the State's bidding documents.

I. State may use the Software with the Computer for which or with which it was acquired, including use at any government installation to which the Computer may be transferred by the State. The State may use the Software with the backup Computer if the Computer for which or with which it was acquired is inoperative.

4. USE OF SOFTWARE AND INFORMATION.

A. State agrees that any Software or technical and business information ("Information") owned by Contractor or its suppliers and furnished to State under this Agreement shall remain the property of Contractor or the supplier.

B. All Software and information furnished to State under this Agreement:

(1) shall be used by State only to install, operate or maintain the Product for which they were originally furnished;

(2) shall not be reproduced or copied, in whole or in part, except as necessary for use as authorized under this Agreement; and

(3) shall, together with any copies except one (1) copy for archival purposes containing State's business records, be returned or destroyed when no longer needed or permitted for use with the Product for which they were initially furnished; and

C. All Software and information designated as "confidential" or "proprietary" shall be kept in confidence except for any part that:

(1) is rightfully obtained by State free of any obligation to keep in confidence;

(2) becomes generally known to the public through acts not attributable to State;

(3) is independently developed by State, or

(4) is subject to disclosure in accordance with the provisions of the Idaho Public Records Act.

D. (1) Within the United States, a Software or program license may be transferred to another location within the State's organization upon written notice to Contractor without additional costs. All other transfers, including a Software or program license outside the United States, shall be permitted only with Contractor's prior written consent which consent shall not be unreasonably

withheld and shall be subject to Contractor's standard transfer fee in effect at the time of the transfer.

(2) The rights granted herein are restricted for use solely by State. State may not authorize or allow the use or marketing of the Software/Programs by a third party, and may not assign or transfer the Software or programs to a third party, without the prior written consent of Contractor. The new end user must agree in writing to Contractor's terms and conditions respecting ownership, use and confidentiality of Software and information and to payment of any scheduled fees.

E. Special Products, if sought in the State's bidding documents, are being developed or modified exclusively for the State, and such Special Products, all related Data, all copyrights in Special Products and derivative works belongs exclusively to the State and are hereby transferred to the State.

5. WARRANTIES.

A. Product warranties shall include the following at a minimum:

(1) On the delivery date the Products and the associated computer operating system Software (basic Software acquired with the equipment that enables equipment to function) will be in good working order and in accordance with Contractor's standard specifications. Unless otherwise specified in the State's bidding documents, the warranty for other suppliers' Commercial Computer Software is included in the supplier's software package and is provided directly from the supplier.

(2) The warranty period shall be as specified in the State's bidding documents and shall begin on the day following successful installation. If no warranty period is specified, the warranty period shall be Contractor's standard warranty period for the Products ordered, commencing the day following successful installation.

(3) State shall notify Contractor if any Product is not in good working order during the warranty period. Contractor will, at its option, either repair or replace any Product not in good working order without charge to State. Repair or replacement Products will be new or equivalent to new in performance and fully warranted the same as new. All returned Products will become the property of Contractor at the time the Product is picked up by Contractor or placed in shipment to Contractor.

(4) The service provided during the warranty period is dependent upon the applicable warranty option selected by State and indicated in the State's bidding documents. If no warranty option is indicated, Contractor will provide the warranty service that is Contractor's standard for such Product, unless otherwise agreed to by the parties.

(5) If the State requires warranty service other than under this Agreement, it shall be agreed to in writing by the parties at rates agreed to in such writing.

B. Software warranties shall include the following at a minimum:

(1) Contractor warrants the tapes, diskettes or other media to be free of defects in materials and workmanship under normal use for ninety (90) days from the delivery date unless otherwise agreed to in writing by the parties.

Contractor will replace without charge any Contractor supplied tapes, diskettes or other media that is not in good working order, during the warranty period, if returned to Contractor. If Contractor is unable to replace the Software, Contractor will refund the full amount paid for the use of the Contractor Software.

(2) In addition to the warranty exclusions stated in Section 6, Contractor does not warrant that the operation of Products acquired under this Agreement will be uninterrupted or error free, or that the Software functions will meet State's requirements unless a Special Product Software. Although Contractor has used reasonable efforts to minimize defects or errors in the Software, State assumes the risk of any damage or loss from the use of or inability to use the Software.

(3) For any Special Product Software provided pursuant to this Agreement, Contractor warrants that for a period of one (1) year after the State accepts the Special Product Software, the Special Product Software will operate and perform error free as the Special Product Software solution for the named State Agency, and in accordance with the functions and specifications as set forth in the Agreement. This express warranty applies only if the State specifically identifies in its specifications the Hardware on which the Special Product Software will be used or if the Special Product Software is used in connection with Hardware acquired in connection with this Agreement.

C. Contractor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. This warranty shall be valid for ninety (90) days from the date Support is provided or performance of the service. For a period of ninety (90) days after delivery or ninety (90) days after delivery and Contractor's successful installation, Contractor or its suppliers will provide telephone assistance to State during State's normal business hours unless otherwise agreed to in writing by the parties.

6. WARRANTY EXCLUSIONS.

A. EXCEPT AS STATED IN SECTION 5, CONTRACTOR, ITS PARENT, SUBSIDIARIES AND THEIR AFFILIATES, SUB-CONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

B. The warranty provided in Section 5 does not cover repair for damages, malfunctions or service failures caused by:

- (1) actions of non-Contractor personnel;
- (2) failure to follow Contractor's installation, operation or maintenance instructions previously provided to State;
- (3) attachment to the Products of non-Contractor products or failure of products not maintained by Contractor unless such installation or use is approved in writing by the Contractor; or
- (4) Force Majeure conditions set forth in Section 30 of the State's Standard Contract Terms and Conditions.

7. EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY.

A. FOR PURPOSES OF THE EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 7, "CONTRACTOR" SHALL BE DEEMED

TO INCLUDE THE CONTRACTOR AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, AND SUPPLIERS AND "DAMAGES" SHALL BE DEEMED TO REFER COLLECTIVELY TO ALL INJURY, DAMAGE, LOSS, LIABILITY, EXPENSE OR COST INCURRED.

B. CONTRACTOR'S ENTIRE LIABILITY AND STATE'S EXCLUSIVE REMEDIES AGAINST CONTRACTOR FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY WORK, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE:

(1) FOR INFRINGEMENT, THE REMEDIES SET FORTH IN SECTION 25 OF THE STATE'S STANDARD CONTRACT TERMS AND CONDITIONS.

(2) FOR FAILURE OF PURCHASED OR LEASED PRODUCTS, THE REMEDIES STATED IN SECTION 5 HEREIN AND SECTION 24 OF THE STATE'S STANDARD CONTRACT TERMS AND CONDITIONS [YEAR 2000]. IF CONTRACTOR IS UNABLE, DESPITE REASONABLE EFFORTS, TO REPAIR OR REPLACE, STATE SHALL HAVE THE RIGHT DURING THE WARRANTY PERIOD TO RETURN THE PRODUCTS FOR A REFUND OF THE PURCHASE PRICE.

(3) FOR FAILURE OF SOFTWARE, THE REMEDY STATED IN SECTION 5 HEREIN AND SECTION 24 OF THE STATE'S STANDARD CONTRACT TERMS AND CONDITIONS [YEAR 2000].

(4) FOR DELAYS IN THE DELIVERY OR SUCCESSFUL PRODUCT INSTALLATION, WHICHEVER IS APPLICABLE, CONTRACTOR SHALL HAVE NO LIABILITY UNLESS THE DELIVERY OR SUCCESSFUL INSTALLATION DATE IS DELAYED BY MORE THAN THIRTY (30) DAYS BY CAUSES NOT ATTRIBUTABLE EITHER TO STATE OR TO FORCE MAJEURE CONDITIONS, IN WHICH CASE STATE SHALL HAVE THE RIGHT, AS ITS REMEDIES:

(a) TO RECOVER DIRECT COSTS INCLUDING REPLACEMENT PRODUCTS, IF ANY, ATTRIBUTABLE TO CONTRACTOR'S DELAY, SPECIFICALLY EXCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES; AND

(b) TO CANCEL THE ORDER WITHOUT INCURRING CANCELLATION CHARGES.

(5) FOR PROVEN DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY, EXCLUDING THE STATE'S OTHER SOFTWARE, DATA, AND DATA FILES, OR FOR BODILY INJURY OR DEATH TO ANY PERSON NEGLIGENTLY CAUSED BY CONTRACTOR.

(6) FOR CLAIMS OTHER THAN SET FORTH IN 7.B(1) THROUGH 7.B(5), CONTRACTOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES, NOT TO EXCEED TWO (2) TIMES THE AGREEMENT VALUE OR ONE (1) MILLION DOLLARS (\$1,000,000.00), WHICHEVER IS GREATER.

C. EXCEPT TO THE EXTENT PROVIDED IN SUBSECTION 7.B(5) ABOVE, CONTRACTOR SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, SAVINGS OR REVENUES

OF ANY KIND, WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. SUPPORT.

A. Except as specifically provided, an order for Support will constitute State's acceptance of the terms of the exhibit for that Support in effect on the date of order. The terms and conditions of a standard support services program agreement (for example, a gold, silver or bronze or similar program) applicable to Products and acquired under this Agreement may apply to the extent such terms or conditions do not materially change the terms or conditions of this Agreement. In the event of any conflict between the terms or conditions of this Agreement and a standard agreement, the terms or conditions of this Agreement shall take priority and control, provided, however, and without limitation, that the provisions of this Agreement relating to choice of law found at Section 31 of the State's Standard Contract Terms and Conditions, and the Exclusive Remedies and Limitation of Liability at Section 7 herein shall apply in all cases and supersede any provisions contained in a standard services agreement or any other agreement.

B. To be eligible for Support, Products must be in good operating condition and at current specified revision levels. Contractor will charge Contractor's standard rates in effect on the date of the Support order to bring non-eligible Products up to these requirements.

C. Contractor may, at no additional charge, modify Products to improve operation and reliability or to meet legal requirements.

D. Relocation of Products is State's responsibility and may result in additional Support charges and modified service response times. Products moved to another county may continue to be serviced subject to availability of a Contractor authorized Support provider.

E. Contractor is not required to provide Support for nonqualified products. "Nonqualified products" are hardware and Software not supplied or approved by Contractor, and Products for which the State does not allow Contractor to incorporate modifications. The State is responsible for removing nonqualified products to allow Contractor to perform Support services.

F. Support does not cover any damage or failure caused by:

(1) media and supplies or use of items not designated for use with Products; or

(2) site conditions that do not conform to Contractor's previously established site specifications; or

(3) neglect, improper use, fire or water damage, electrical disturbances, transportation by State, work or modification by people other than Contractor's employees, subcontractors, or other authorized parties.

G. The State is responsible for the security of its proprietary and confidential information and for maintaining a procedure external to the Products to reconstruct lost or altered files, data or programs. State must have a representative present when Contractor provides Support services. State must notify Contractor if Products are being used in an environment that poses a potential health hazard to Contractor's employees or subcontractors.

24.5 Special T&Cs for Janitorial Contracts

INSURANCE:

For the duration of the Contract and until all work specified in the Contract is completed, the Contractor shall maintain in effect all insurance as required herein and comply with all limits, terms and conditions stipulated therein. IF REQUESTED BY THE STATE, within two (2) weeks after request, the Contractor will provide certificate(s) of the insurance for the coverages required by the State as specified below. There will not be provisions for exceptions to this requirement. FAILURE to provide the certificates of insurance within the two (2) week period may, at the State's discretion, result in cancellation of the Contract. Evidence of such insurance shall consist of a completed copy of the certificate of insurance signed by the insurance agent for the Contractor and returned to the State. If for any reason, any material change occurs in the coverage during the course of this Contract, such change will not become effective until 30 days after the State has received written notice of such change. The amount of such insurance shall be not less than:

- (1) Worker's Compensation Insurance in amounts as required by statute.
- (2) Automobile Liability including non-owned and hired \$500,000.00
- (3) Commercial General Liability or Comprehensive General Liability Insurance
including Contractual Liability \$500,000.00

B. The certificate must contain a provision that, should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the State, by certified or registered mail, receipt requested.

QUALITY CONTROL MEETINGS: The parties to this contract agree to schedule and participate in quality control meetings on an "as needed basis," but not less than quarterly during the term of this contract.

The purpose of such meetings shall be to provide feedback to the Contractor on the performance of the contract and to provide the State agency with the opportunity to discuss any problem areas that may arise.

Any complaints not resolved after the second meeting should be reported to the Administrator, Division of Purchasing for follow-up.

EXAMINATION OF SITE: Before submitting a bid to the State, bidders are urged to visit the site where the services are to be performed and fully inform themselves of all the conditions and limitations. Failure to do so will in no way relieve the successful Contractor of the responsibility in furnishing sufficient materials, equipment and/or personnel to perform all duties described in the specifications without additional cost to the State.

WORK INSPECTION: The site where the services are to be performed is to be personally inspected by a supervisor of the Contractor each and every month and a signed statement either attached or written on each monthly statement that the scheduled duties have been completed as specified and that the appearance of the work site meets the State's standards. Any differences between the Contractor's standards and the State's will be discussed further.

CONTRACTOR QUALIFICATIONS: The State expects the work to be done by thoroughly trained and competent people. The bidder must be able to furnish evidence of successful jobs of comparable size, if requested by the State. The Contractor shall have sufficient equipment and personnel to fulfill the terms of this contract. Excuses of non-operating equipment and personnel on vacation, etc. as causes for poor workmanship will not relieve the Contractor of his obligation to perform the contract and may be cause for termination.

EMPLOYEE EXPERIENCE: Contractor shall provide employees experienced in and qualified to perform specified tasks. The contractor and the State will jointly agree upon those employees who are to perform services under this agreement. The State shall be the sole judge of employee performance. If, for any reason, the State deems any contract employee's performance unsatisfactory, the contractor shall upon written or verbal request by the State, immediately remove such employee. The contractor shall replace such employee within twenty four (24) hours of notification unless a different time frame is agreed upon. Failure to provide experienced and qualified employees acceptable to the State will be cause for immediate termination of the contract.

24.6 Special T&Cs for Lease/Time Purchase Contracts

LEASE INVOICES AND PAYMENTS: The State's obligation to make periodic payments for the lease of equipment shall begin upon delivery of goods which conform to the requirements of the Lease contract. Contractor agrees to bill the State on the 15th day of the month immediately prior to the month for which payment is requested or on a pro-rated basis from the date of installation to the first day of the following month if installation is not on the first working day of the month. Invoices are to be based upon monthly billing in arrears, unless otherwise agreed to by the parties. Payment for each lease period shall be dispatched by the State no later than the 1st day of the month for the period for which payment is requested. Contractor is specifically aware that the use of the equipment will be by an agency of the State of Idaho. Contractor is further aware that such use is to be funded by appropriations from the Legislature of the State of Idaho, and may be funded in part by the government of the United States of America. Contractor is further aware that payment pursuant to the terms of this Lease shall be by government voucher. Contractor specifically agrees that late payment by the State of Idaho shall not constitute grounds for Default. Any payments received later than thirty (30) calendar days from the due date may be subject to a late charge of five percent (5%) of the amount of the payment which remains due for more than thirty (30) calendar days. State agrees to tender payment for the twelfth month of the Lease period simultaneously with tender of the first month's payment, if requested.

OWNERSHIP: It is expressly understood and agreed that this is a contract of leasing only and that the State by these presents acquires no right, title, or interest in or to the equipment described in the Lease, except those of a user.

INSURANCE: The State maintains a program of self insurance; and the equipment will be insured to the same extent as other property of the State. All Public Liability coverage for the State individually shall be secured by State. Upon written request State shall furnish Contractor satisfactory evidence of such insurance coverage or self-insurance, which evidence shall among other things provide that Contractor receive immediate notice of policy cancellation. All such insurance or self-insurance shall protect, as their interests may appear, the Contractor, the State, any other person having an interest in the Equipment, and any person responsible for the use or operation of the Equipment.

DAMAGE TO LEASED EQUIPMENT: The State shall be responsible for damage to, or loss of, Contractor's leased equipment caused by the negligence of the State, its employees, officers, or agents while the equipment is in the possession and control of the State. Contractor shall be responsible for damage to, or loss of, the equipment caused by the negligence of the Contractor or of the manufacturer and from all other sources.

NOTICE OF INTENT TO CANCEL FOR DEFAULT: Contractor or State shall give thirty (30) days written notice to the other, of any intent to cancel this Lease upon grounds of Default. Within that time period, the appropriate party shall have the absolute and uncontrolled right to cure. Written notice shall be dispatched by Lessor to the Administrator of the Division of

Purchasing; if by Lessee to Lessor, at the respective mailing addresses. Cancellation of this Lease shall be ineffective if attempted in any other manner.

24.7 Special T&Cs for Vehicle Leases

The State of Idaho, by and through its statutory agent, the Administrator, Division of Purchasing on behalf of the Requisitioning Agency, hereinafter referred to as "Lessee", enters into this Vehicle Lease Agreement hereinafter referred to as "Lease," with the vendor hereinafter referred to as "Lessor" whose name and address are noted in Exhibit E, said exhibit (and all other exhibits hereinafter referenced) attached hereto and incorporated in full, for the lease of a motor vehicle(s), the respective vehicle identification number(s) being set forth in Exhibit A. In addition to the following terms, Lessor agrees that said motor vehicle(s) shall be delivered to Lessee at Lessee's place of business, on or before the date specified in Exhibit C. Further, that said motor vehicle(s) shall be delivered in good condition completely serviced for immediate use by Lessee, free from defect, and in all respects prepared for the use for which the motor vehicle(s) is intended. Further, said motor vehicle(s) shall minimally comply in all respects with the motor vehicle specifications required for a vehicle of its type as set forth in Exhibit B and/or as submitted in Lessee's bidding documents.

1. **DURATION OF LEASE-OPTION TO RENEW:** Lessor agrees to lease said motor vehicle(s) to Lessee for a period of time as set forth in Exhibit C, hereinafter referred to as "Lease Term." Lessee shall exercise its option to renew for annual periods, if at all and provided for in the bidding documents, by serving written notice upon Lessor of its intent to later than thirty (30) days prior to conclusion of a Lease Term. Pricing for any renewal period shall not exceed the amount for the most recent annual period of the Lease Term or as provided for in the bidding documents. Written notice shall be deemed to be received by Lessor upon dispatch of same by the Administrator, Division of Purchasing, in the postal system of the United States.
2. **COST OF LEASING:** Lessor agrees to lease said motor vehicle(s) to Lessee upon an individual motor vehicle basis, the respective periodic sums of which are set out in Exhibit C.
3. **PAYMENT SCHEDULE:** Lessee's obligation to make periodic payments for the lease of said motor vehicle(s) shall begin upon delivery of the vehicle(s) to Lessee. Lessor agrees to bill Lessee on the 15th day of the month, immediately prior to the period for which payment is requested. Payment for each Lease period shall be dispatched by Lessee on the 1st day of the following the period for which Payment is requested. Lessor is specifically aware that the use of said leased vehicle(s) will be by the Requisitioning Agency listed in Exhibit E, an agency of the State of Idaho. Lessor is further aware that payment pursuant to the terms of this Lease shall be by government voucher. Lessor specifically agrees that late payment by the State of Idaho shall not constitute grounds for Default. Any payments received later than thirty (30) calendar days from the due date may be subject to a late charge of five percent (5%) of the amount of the payment which remains due for more than thirty (30) calendar days. Lessee agrees to tender payment for the twelfth month of the Lease period to Lessor simultaneously with tender of the first month's payment, if requested.
4. **EXCESS MILEAGE:** Lessor shall grant Lessee a maximum mileage allowance in an amount listed in Exhibit C per vehicle in excess of mileage registered upon delivery. Excess mileage shall be paid by Lessee at the rate per mile, per vehicle, listed in Exhibit C. In the event of early termination the number of miles allowed will be determined by prorating the mileage allowed for the full term by the number of months the Lease was in effect.

FOR AND IN CONSIDERATION OF THE LEASE PAYMENT, Lessor and Lessee further agree:

- (a) That Lessee shall maintain the leased motor vehicle(s) in as good condition as when received, ordinary wear and tear or defect excepted. The Lessee further

agrees that it shall be responsible for all non-excepted needed labor and repairs, including the continuous operation of the speedometer.

- (b) That Lessee's obligation pursuant to Paragraph (a) is superseded by and to the extent of the manufacturer's warranty, set forth as Exhibit D. Should repair by Lessor of warranty items extend in time beyond 72 hours, Lessor agrees to provide a replacement vehicle to Lessee at no additional charge until the leased vehicle is repaired and returned to Lessee.
- (c) That for warranty purposes, Lessee shall report to the Lessor any abnormalities of operation of defects, as well as all accidents involving the vehicle(s), within 120 hours after the same come to his attention and agrees to permit the Lessor to inspect the vehicle(s) at all reasonable times.
- (d) That the Lessee agrees to maintain in force and to pay the premiums thereon for a policy of insurance covering comprehensive fire, theft and collision coverages with total loss payable to Lessor. All Public Liability coverage for the Lessee Individually (with limits of \$100,000/ \$300,000 bodily injury and \$100,000 property damage) shall be secured by Lessee. Lessee shall furnish Lessor satisfactory evidence of such insurance coverage, which evidence shall, among other things, provide that Lessor receive immediate notice of policy cancellation. All such insurance shall protect, as their interests may appear, the Lessor, the Lessee, any other person having an interest in the vehicle(s), and any person responsible for the use or operation of the vehicle(s).
- (e) That the title of the vehicle(s) at all times shall remain in the Lessor's name. Lessee shall pay for licensing thereof for operation within state laws. Lessee shall keep the vehicle(s) free from any and all liens for claims and shall do or permit no act or thing whereby Lessor's title may be encumbered or impaired.
- (f) That neither this Lease, nor the Lessor's rights hereunder, shall be assignable or in any other manner transferable by Lessor to any other party, without the approval in writing of the Administrator of the Division of Purchasing, and any such agreement or transfer without such approval shall cause the annulment of the agreement so assigned or transferred, at the option of the State of Idaho.
- (g) That neither this Lease, nor the Lessee's rights hereunder, shall be assignable by Lessee without Lessor's written consent.
- (h) That the Lessee will hold Lessor harmless for any liability arising out of the negligent use or operation of the vehicle(s) by Lessee.
- (i) That the Lessee shall be responsible for any damage to the vehicle(s) caused by Lessee's negligence or misuse of same.
- (j) That Lessee shall return the vehicle(s) to the Lessor's place of business upon expiration of the Lease.

5. **NOTICE OF INTENT TO CANCEL FOR DEFAULT:** Lessor or Lessee shall give thirty (30) days written notice to the other, of any intent to cancel this Lease upon grounds of Default. Within that time period, the appropriate party shall have the absolute and uncontrolled right to cure. Written notice shall be dispatched by Lessor to the Administrator of the Division of Purchasing; if by Lessee to Lessor, at the respective mailing addresses heretofore stated in Exhibit E. Cancellation of this Lease shall be ineffective if attempted in any other manner.

6. OFFICIALS, AGENTS AND EMPLOYEES OF LESSEE NOT PERSONALLY LIABLE:

It is agreed by and between the parties hereto that in no event shall any official, agent or employee of the State of Idaho be, in any way, personally liable or responsible for any covenant or agreement herein contained whether express or implied, nor for any statement, representation, or warranty made herein or in any way connected with this Lease.

7. APPROPRIATION BY LEGISLATURE REQUIRED: It is understood and agreed that Lessee is a government entity and this Lease shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State Legislature or the Congress of the United States as may exist from time to time. In the event the Idaho Legislature or United States Congress fails, neglects or refuses to appropriate such funds as may be designated and enables the Requisitioning Agency to continue the Lease payment, this Lease shall be at such time automatically terminated and at an end, and all future rights and liabilities of the parties hereto shall thereupon cease within ten (10) days after written notice to the Lessor. It is understood and agreed that the Lease Payments herein provided for shall be paid from the joint appropriation of the State of Idaho, Requisitioning Agency as listed in Exhibit E.

8. GENERAL PROVISION:

- (a) Neither party shall be liable or deemed to be in default for any Force Majeure delay or failure in performance under this Lease or interruption of service resulting from Acts of God, civil or military authority, acts of war, riots, insurrections, labor disputes, or unusual delays beyond the Vendor's control.
- (b) This Lease shall be construed in accordance with, and governed by the laws of the State of Idaho.
- (c) This Lease, with the State's Invitation To Bid or Request for Proposal , the Vendor's bid response to the extent it is not in conflict with the bid specifications and Exhibits A through E inclusive, constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiation, representations, commitments, and all other communications between the parties. It may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties. The terms of the Lease shall prevail notwithstanding any variances with the terms and conditions of any order submitted by the State of Idaho.

EXHIBIT "A"

Vehicle Lease: Identification Number	Year	Make	Model	Vehicle
				To be provided at time of delivery

EXHIBIT "B"

Specifications:	Specifications, if not attached or otherwise described, are those stated in the bidding documents and are incorporated by reference as though herein set out in full.
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EXHIBIT "C"

Delivery Date:	On or Before _____
Lease Term:	_____ years
Lease Costs: vehicle -	Monthly @ \$_____ per month per
Excess Mileage Charge:	\$ 0._____ per mile over _____ miles per year
Annual Pre-Payment Credit	_____ % of annualized payment

EXHIBIT "D"

Manufacturer Warranty:	This document will be provided by the Lessor with each vehicle under this Lease and is made a part of this Lease.
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EXHIBIT "E"

Lessor Name and Address: Name and Address:	Requisitioning Agency's (Lessee)
ABC Company 123 Anywhere Street Anytown, US 11100	Department of ABC 987 Payment Way This Town, US 99987

24.8 Special T&Cs for Statewide Contracts

MINIMUM ORDERS: Bidders are to specify the minimum order acceptable for prepaid shipments. Orders under this amount may be prepaid with the actual freight charges added to the invoice. Where no minimum order exception is noted, it will be taken that no minimum order requirements exist. Excessive minimum order restrictions may result in rejection of your bid.

REPORTS

The Contractor will be required to submit to the Division of Purchasing, quarterly reports that provide the following minimum information:

- 1 Usage reports by Agency and by Agency receiving location, indicating the types of forms received, total quantity of each type received and the total cost of the order.
- 2 When possible, reports should be in the same format as the product bidding schedule(s).
- 3 Custom reports that may be requested from time to time by the Division of Purchasing.

Reports will be due to the Division of Purchasing at the end of the first quarter (90 days) of the Contract and each quarterly Anniversary thereafter.

EXCEPTIONS TO USE: Unless this Contract is designated "optional use" or other exceptions to use are listed in the State's bidding documents, State agencies will obtain their requirements from this Contract. The State reserves the right to purchase property elsewhere on an emergency basis where delivery or minimum order requirements (including shipments with prepaid freight charges added) are restrictive or burdensome.

ADMINISTRATIVE FEE: The prices to be paid by the State shall be the prices bid by the Contractor plus one and one-quarter percent (1.25%). The additional percentage shall represent the State's contract usage administrative fee. No more than quarterly, the Contractor shall remit to the State through its Division of Purchasing, an amount equal to the one and one-quarter percent (1.25%) of the Contractor's net (sales minus credits) quarterly Contract or Agreement sales.

24.9 Special T&Cs for Blanket Purchase Orders/Price Agreements

PURPOSE: The purpose of this Blanket Purchase Order -- Price Agreement ("Agreement") is to establish general terms and conditions for the periodic and repetitive purchase of small items or services as needed by an Agency or Department ("Ordering Agency") of the State of Idaho ("State").

EXTENT OF OBLIGATION: The State is obligated only to the extent of authorized orders actually placed against this Agreement by the Ordering Agency.

PRICING: The prices to the State, in addition to any discounts for prompt payment, shall be as low as, or lower than those charged the Contractor's other customers, given similar quantities and business considerations.

ORDER LIMITATION: No individual order under this Agreement shall exceed \$5,000.00 and no individual line item shall exceed \$1,500.00. Violations of this provision will be cause for immediate termination of the Agreement.

INDIVIDUALS AUTHORIZED TO PLACE ORDERS: The State will furnish from time to time, written notice of individuals authorized to place orders and any applicable dollar limitation per order under this Agreement. The Contractor is NOT AUTHORIZED to accept orders from any individual not listed on the authorized list.

SAVE HARMLESS: Contractor shall protect, indemnify, and save the State harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of Contractor, his employees, or subcontractors, howsoever caused.

DELIVERY TICKETS: All shipments under this Agreement shall be accompanied by one (1) Delivery Ticket or one (1) Sales Slip which shall contain the following minimum information:

Name of Contractor (Supplier)
Blanket Purchase Order (Example BPO 24)
Date of Order
Order Number (Example 001,002,etc.)
Itemized List of Supplies or Services Furnished
Quantity, Unit Price, and Extension of Each Item Less Applicable Discounts
Date of Delivery or Shipment

INVOICING: A monthly summary invoice in original and two copies shall be submitted to the Ordering Agency for all orders made during the month, identifying the delivery tickets covered therein, stating their dollar value and supported by one receipted copy of each delivery ticket. ALL INVOICES are to be sent directly to the ORDERING AGENCY ONLY. Blanket Purchase Order (BPO) numbers are to be shown on all invoices. **In no case** are invoices to be sent to the Division of Purchasing.

GOVERNING LAW: This Agreement shall be construed in accordance with, and governed by the laws of the State of Idaho and in particular, the Idaho Uniform Commercial Code.

INSPECTION AND DELIVERY ARRANGEMENTS: All supplies for which authorized orders are placed hereunder shall be delivered by Contractor F.O.B. Destination, freight prepaid and allowed, unless otherwise stated or arrangements have been made to pick up supplies at Contractor's location. Inspection of supplies will be made by the State prior to acceptance of the supplies.

TERMINATION: Unless otherwise stated elsewhere in this Agreement, termination of the Agreement may be made fifteen (15) days after receipt of verbal or written notice from the State.

24.10 Miscellaneous T&Cs

CONFIDENTIAL INFORMATION. Pursuant to this Agreement, Vendor may collect, or the State may disclose to Vendor, financial, personnel or other information that the State regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the State. Vendor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose Confidential Information or any advice given by it to the State to any third party except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then, only upon timely notice to the State. The State may require that Vendor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. Confidential

Information shall be returned to the State upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. "Confidential Information" shall not include data or information that:

- a. is or was in the possession of Vendor before being furnished by the State, provided that such information or other data is not known by Vendor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;
- b. becomes generally available to the public other than as a result of disclosure by Vendor; or
- c. becomes available to Vendor on a non-confidential basis from a source other than the State, provided that such source is not known by Vendor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

TRANSITION REQUIREMENTS: At the expiration of the contract, if contract transition is required, the current Contractor shall exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor. The Contractor shall, upon written notification from the Contract Administrator, provide phase-in, phase-out services for up to 120 working days and negotiate in good faith with the Contract Administrator and the contract successor, a plan to determine the nature and extent of phase-in, phase-out services required. The Contractor shall provide to the Contract Administrator for approval, a detailed transition plan. The Contractor shall provide sufficient, experienced personnel during the transition period to ensure that the services called for in the contract are maintained at the required level of proficiency.

DISCOUNTS: The bidder may, at its option, quote a **negative** mark-up to the applicable price list.. A negative mark-up has the net effect of being a discount **from** the price list.

ACCESS TO RECORDS: During the bid evaluation the State reserves the right to request from the bidder access to and/or a copy of the Microsoft Channel Pricing for pricing verification. Failure to provide the requested price list within three (3) business days following the State's request may result in disqualification of the bidder's proposal.

PRICE LIST ACCESS: At any time during the Contract and for a three (3) year period following the end of the Contract, the State reserves the right to request from the Contractor access to and/or a copy of the applicable price list used for the Contract's pricing basis for Contract pricing verification. Failure to provide the requested price list within three (3) business days following the State's request may result in Contract termination.

RECORDS MAINTENANCE: The Contractor shall maintain or supervise the maintenance of all records necessary to properly account for all payments made to the Contractor for the costs authorized by this Contract. These records shall be retained by the Contractor for at least three (3) years after the Contract terminates, or until all audits initiated within the three (3) years have been completed, whichever is later.

AUDIT RIGHTS: The Contractor agrees to allow State and Federal auditors and State agency staff access to all the records relating to this Contract, for audit, inspection, and monitoring of services or performance. Such access will be during normal business hours or by appointment.

NEW CURRENT PRODUCTION (Photocopiers): If called for in the specifications, new current production shall mean: (1) produced by the manufacturer within the last six (6) months prior to the "Invitation to Bid" opening; and two (2) has not formally been discontinued; and three (3) service and parts must be available for the length of time as contained in the "Invitation and Bid," where applicable.

25. PUBLIC WORKS

The State of Idaho, Department of Administration, Division of Public Works is responsible for all public works projects. Any questions should be directed to:

Division of Public Works
502 N, 4th Street
PO Box 83720
Boise, ID 83720-0072
Phone: 208-334-3453, Fax: 208-334-4031

25.1 Definition

Public Works is defined in *Idaho Code 67-5710B* as:

(2) "Public works" mean:

(a) Any new building, alteration, repair, demolition or improvement of any land, building, structure including utilities, or remodeling or renovation of existing buildings, or other physical facilities, to make physical changes necessitated by changes in the program, to meet standards required by applicable codes, to correct other conditions hazardous to health and safety of persons which are not covered by codes, or to affect a permanent improvement to the facility for any reason including aesthetics or appearance;

(b) Site improvement or developments which constitute permanent improvements to real property;

(c) Purchase and installation of fixed equipment necessary for the operation of new, remodeled, or renovated buildings and other physical facilities for the conduct of programs initially housed therein to include any equipment that is made a permanent fixture of the building; and

(d) Purchase of the services of architects, engineers, and other consultants to prepare plans, program documents, life cycle cost studies, energy analysis, and other studies associated with any new building, alteration, repair, demolition or improvement and to supervise the construction or execution of such projects.

25.2 Determining Public Works

Does your project fall under the Division of Public Works or can it be handled using Division of Purchasing Rules? The following information is presented to help you make the determination. Note the key words that can help make this determination.

Division of Public Works

Construction (build it)

- Buildings - new and renovated
- Improvements to real property
 - Parking lots
 - Utilities
 - Earthwork
 - Landscaping
- Architect, Engineers and other consultants related to above
- Equipment and furnishings permanently attached to a building or facility
 - electrical equipment direct wired
 - commercial washing machine or dishwasher that has direct water or gas service connections

KEY WORDS

installed
connected
constructed

Division of Purchasing

Acquisition (buy or rent it)

- Procuring or purchasing goods, services, parts, supplies, and equipment
- Building equipment and furnishings not permanently attached to the building or facility
 - electrical equipment that plugs into an outlet
 - residential washing machine connected by hoses
- Building materials and equipment to be supplied by Agency to Contractor or installed by Agency staff or inmates
- Consulting services other than relating to buildings and facilities

KEY WORDS

delivered
furnished
assembled

25.3 Administration of Construction Projects

Who administers the project, Public Works or the Agency? The following information can help you determine who is responsible for administering your project.

Administered by DPW

Projects funded by Permanent Building Fund

Projects over \$30,000 construction cost (see exceptions)

Administrative Office Buildings and related facilities for:

Idaho Transportation Dept.

Dept. of Fish & Game

Dept. of Parks & Recreation

Dept. of Lands

Administered by Agency

University of Idaho except where Permanent Building Funds are used

Projects under \$30,000 construction cost (may use informal bids)

Other than Administrative Office Buildings

highways and bridges, maint. facilities, sand sheds

fish hatcheries, maint. facilities, stream improvements, game fences

park grounds improvements, visitor centers, restrooms, marina improvements

roads, bridges, equipment and maint. buildings

The Division of Military has exemptions from DPW and usually do their own projects not funded by the Permanent Building Fund.

North Idaho College and College of Southern Idaho are not considered state institutions and do their own projects unless they receive Permanent Building Funds.

State agencies using other than Permanent Building Funds for projects with a written cost estimate less than \$30,000 do not come under the administrative authority of the Division of Public Works and the Permanent Building Fund Advisory Council. An agency may request, and the Division of Public Works may accept the administration of such projects. If these projects are administered by the Division of Public Works, they are not required and should not be submitted or reported to the Permanent Building Fund Advisory Council.

25.4 Methods

Public works projects are governed by State Statutes. Different bidding limit thresholds apply as listed below. Smaller projects are delegated to agencies and larger projects are handled by the Division of Public Works. Bidders for public works projects do not have to be registered vendors by the Division of Purchasing to submit a bid, but are required to be properly licensed as Public Works Contractors.

25.4.1 Projects Costing Less Than \$2500

Projects with a written cost estimate of less than \$2,500 do not have specific requirements for their implementation. Common sense and good judgment should be used if such a project is to be accomplished.

25.4.2 Projects Costing More Than \$2500 and Less Than \$30,000

Projects with a written cost estimate of more than \$2,500 and less than \$30,000 are accomplished using informal bidding. Bids must be solicited from a minimum of three (3) licensed public works contractors. For a detailed information and basic minimum requirements for informal bidding documents see *25.5 Requirements for Informal Bids and Letter Contract Documents* and *25.6 Sample Invitation for Informal Bids Document*.

Minimum requirements for informal bids include the following:

1. Adequate public notice given at least seven (7) days prior to bid opening. Such notice may be publication in a newspaper or trade journal in the work area or by notifying persons believed to be interested.
2. Informal bids must be submitted in writing.
3. Bid shall be in response to a prepared written document describing the projects scope of work.
4. Bids must be documented in the project file.

25.4.3 Projects Costing More Than \$30,000

Projects estimated to cost over \$30,000 are formally bid and administered by the Division of Public Works.

25.5 Requirements for Informal Bids and Letter Contract Documents

The extent of written documents including plans and specifications may vary depending on the complexity of the work. The intent of the informal process is to reduce the amount of documentation, and lengthy procedures inherent in the formal bidding and construction process. To be successful, the process should minimize the procedures but retain the appropriate safeguards to assure adequate performance. Basic minimal requirements for informal documents would include the following:

1. An invitation to bid, preferably published in a newspaper. Notifying interested bidders should always be done, but should be in addition to the invitation, rather than in lieu of it.
2. A prepared bid form, with blank spaces to fill in the amount of the bid, and for name and signature of bidder. If the project includes plumbing, heating or electrical work, the form should have the appropriate blank spaces.
3. Documents should state the requirement that all contractors and subcontractors are to be properly licensed at the time of bid.
4. Documents should indicate the minimum insurance requirements for the contractor. To avoid delays in commencement of the work, a certificate of insurance should be requested and submitted with the bid. If the low responsible bidder does not include the insurance certificate, no actual work should commence until such assurance of minimum coverage is verified.
5. All informal bids (unless less than \$5000) should require performance and payment bonds in the amount of 50% of the contract amount. A particular form is not mandated. No payment on the project should be made until these bonds have been furnished.
6. An amount of time for completion of the work should be stated in the bidding documents and incorporated into the letter contract.
7. Plans and specifications should be sufficiently detailed to clearly define the extent and quality of the work and to allow inspection for confirming the performance. The required amount of detail will vary significantly with the complexity of the project. Reference standards would be adequate in many instances.
8. Code and safety issues should be considered. If appropriate, review and approval by the Division of Building Safety and the State Fire Marshal should be accomplished.
9. A public bid opening at a specific time and place is acceptable but not mandatory. Because of the informal nature, most irregularities in the bid can be waived. A documentation of the receipt of bids is to be placed in the project file. Retention of all bid documents is desirable.
10. Evaluation of bids and awarding of a letter contract should be accomplished promptly. The letter contract should include a date to proceed, a date to complete the work and the total contract amount or terms.
11. In most cases, only one total payment should be made after the final completion and acceptance of the work. If more than one payment is deemed necessary or desirable, the bidding documents and the letter contract should address the terms and conditions for partial payments. The documents should also allow the Owner to deduct an appropriate amount from the payment for unacceptable performance or failure to complete on the agreed time.

Reasonable judgment should be used in deductions from payments. Specific liquidated damages typically will not be employed in informal bidding.

12. Changes to letter contracts should be in the form of an additional letter, clearly indicating the scope of the change and any adjustments in contract amount or time.

13. Careful evaluation and acceptance of the work should be accomplished prior to authorized payment. The person responsible for this task should be determined and documented prior to issuing the letter contract. In some cases, the designer may not be contracted to perform construction and acceptance service. In many cases, it will be available on an hourly rate basis.

14. Generally, informal bid contracts will not require the typical close-out documents or requirement for the designer or contractor to provide services after the final payment.

25.6 Sample Documents for Informal Bids

The following three pages are informal bid forms used by the Division of Public Works. They may be copied for agency use. References to the Division of Public Works should be replaced by agency information.

(letterhead)

INVITATION FOR FORMAL BIDS

Informal bids will be received by Division of Public Works, State of Idaho, at _____
_____ until _____ local time, on _____
_____ for DPW Project No. _____

Forms and other information are on file for examination at the following locations:

Division of Public Works, 502 N. 4th St., Boise, ID
Architect/Engineer
Agency

Walk-thru (if
required)

A Public Works Contractors License for the State of Idaho is required to bid on this work.

Estimated Cost:

Jan Frew, Sr. Project Manager
Division of Public Works

(Date)

REQUEST FOR INFORMAL BIDS

DPW Project No. _____

The State of Idaho, Division of Public Works, will receive informal bids for the above project at (location) until (time) local time on (date).

The work shall include labor and materials required to construct (description) as shown on the attached drawings and specifications.

An on-site inspection may be scheduled with (contact person including address and phone #).

Informal bids shall be based on provisions of Section 44-1001 and 44-1002 of the Idaho Code dealing with labor preference.

The Contractor will be required to maintain Contractors Liability Insurance to include Workman's Compensation (statutory), Employers Liability (\$100,000 minimum) and Comprehensive General Liability (minimum of \$500,000 combined single limits for bodily injury and property damage). Include a certificate of insurance with the informal bid.

The Contractor will be required to coordinate his work with (Agency person).

All work is to be accomplished within (# of days) calendar days from receipt of a Letter Contract and Notice to Proceed. Failure to perform the work within this established time period will be grounds for withholding an appropriate amount of the compensation as damages for the delay.

Contractors and Speciality Contractors must have a Public Works Contractors license as suitable for work to be accomplished on this contract.

The Contractor agrees to pay all state sales and use taxes.

A performance bond and labor and materials bond each in the amount of fifty percent (50%) of the contract amount will be required for work accomplished on this contract prior to payment of any compensation due.

Plans, specifications, proposal forms and other information are available at (list plan houses, etc.)

INFORMAL BID

DPW Project No. _____

The undersigned proposes to do the above work in accordance with the request for informal bids and all drawings and specifications attached thereto.

The Bidder agrees to commence work upon receipt of a Letter Contract and Notice to Proceed, and to complete the work within (# of days) calendar days thereafter. Bidder proposes to perform the work for _____ Dollars (\$ _____).

Dated this _____ day of _____ 199____.

Respectfully submitted,

Subcontractor:

By: _____
—

Plumbing

(Company Name)

Heating & Air Conditioning

(Business Address)

Electrical

(Signature)

(Provide spaces for the above three
Subcontractors only when needed).

(Title)

(Telephone Number)

(Fax Number)

25.7 State Statutes Pertaining to Public Works

Statutes pertaining to Public Works are found primarily in *Idaho Code 67-5710 - 67-5713*.

67-5710. PERMANENT BUILDING FUND ADVISORY COUNCIL -- APPROVAL OF USE OF FUND -- DUTIES OF ADMINISTRATOR OF PUBLIC WORKS.

There is hereby created in the division of public works a permanent building fund advisory council which shall be appointed by the governor. This council shall be composed of one (1) member of the senate, one (1) member of the house of representatives, a citizen engaged in the contracting business, a citizen engaged in the banking business, and a citizen who is a member of the business community not engaged in contracting or banking. The senate member and house of representative member shall be appointed for a fixed term of two (2) years. All other council members shall be appointed for a fixed term of three (3) years. The terms of office of members of the council holding office prior to July 1, 1996, shall expire on the following dates: contracting business member on July 1, 1996; senate member and house of representative member on December 1, 1996; business community member on July 1, 1997; and banking member on July 1, 1998. On or after July 1, 1996, the governor shall appoint members of the council as terms of existing members expire. All members of the council shall serve at the pleasure of the governor. The administrator of public works and the responsible heads of the agencies for which appropriations for construction, renovations, remodelings or repairs are made pursuant to chapter 11, title 57, Idaho Code, shall consult, confer and advise with the permanent building fund advisory council in connection with all decisions concerning the administration of these appropriations and the planning and construction or execution of work or works pursuant thereto. The approval of the permanent building fund advisory council shall be a condition precedent to the undertaking of planning or construction.

The administrator of public works is hereby directed to work in close cooperation with the responsible heads of institutions and agencies for which appropriations are made herein and no building proposals shall be approved by the administrator of public works nor any planning or work undertaken by that officer pursuant to these appropriations without the prior approval of the responsible chief officer of the institutions and agencies for whom appropriations are made herein.

67-5710A. REQUIREMENT OF PLANS AND SPECIFICATION APPROVAL BY PERMANENT BUILDING FUND ADVISORY COUNCIL AND DELEGATION OF PROJECT OVERSIGHT BY THE ADMINISTRATOR FOR THE DIVISION OF PUBLIC WORKS.

(1) (a) Unless an emergency exists as defined in section 67-5711B, Idaho Code, an existing public works may not be altered, repaired, constructed or improved on property owned or occupied by any state institution, department, commission, board or agency, if the estimated cost of work exceeds the limit established in section 67-5711, Idaho Code, and except for those institutions and agency exemptions listed in section 67-5711, Idaho Code, without regard to source of funding, until the location, design, plans and specifications are approved by the permanent building fund advisory council and the project supervised by the division of public works or its designee.

(b) Facilities to be built with funds under the control of a nonstate entity, and owned or occupied by state entities, must have plans and specifications prepared, and all plans and specifications must be reviewed and approved by the permanent building fund advisory council prior to the advertising, bidding, construction and/or negotiation for construction of the facilities.

(2) (a) The administrator for the division of public works may delegate control over design, construction and all other aspects of a public works or maintenance project which costs less than one hundred fifty thousand dollars (\$150,000), to agencies of state government on a project-by-

project basis, if a responsible party of the state agency requests that delegation in writing and the permanent building fund advisory council approves the delegation.

- (i) The state agency to whom control is delegated shall assume all responsibility for project budgets and shall receive funds appropriated for the project upon application and approval by the permanent building fund advisory council.
- (ii) Delegation of project control does not exempt the state agency from complying with public works statutes, life safety and building codes or other applicable codes and regulations. The state agency also must comply with any guidelines or procedures for design and construction adopted by the division of public works and the permanent building fund advisory council.
- (iii) State agencies that receive delegated projects may not have access to permanent building fund advisory council contingency funds unless approved by the permanent building fund advisory council or authorized by appropriation.
- (iv) Prior, written approval from the administrator must be granted for any public works utilizing sole source or limited competition. No agency will be delegated the ability to declare an emergency as defined in section 67-5711B, Idaho Code.
- (v) The permanent building fund advisory council may elect to audit any project for compliance with applicable codes and policies.
- (vi) The delegated state agency will use standard documents for professional services contracts and for construction contracts as adopted by the division of public works.
- (vii) Delegation is subject to cancellation by the administrator for the division of public works with the concurrence of the permanent building fund advisory council.

67-5710B. DEFINITIONS.

As used in this chapter:

(1) "Preventive maintenance" means:

- (a) Corrective repairs or replacements used for existing state-owned, or state operated facilities, which result from a systematic program in which wear, tear, and change are anticipated and continuous corrective actions are required to be taken to ensure peak efficiency and to minimize deterioration. It includes systematic inspection, adjustment, lubrication, replacement of components, as well as performance testing and analysis; and
- (b) Repairs and replacements with an estimated useful life of less than five (5) years; and
- (c) Repairs and replacements which are funded in the state agency's operating budget; and
- (d) Repairs and replacements which can be accomplished by the agency's existing physical plant staff; and
- (e) Repairs and replacements which do not require the services of architects, engineers, and other professionally licensed consultants to investigate conditions, prepare recommendations for corrective action, prepare plans and specifications, and supervise the execution of corrective projects.

(2) "Public works" mean:

(a) Any new building, alteration, repair, demolition or improvement of any land, building, structure including utilities, or remodeling or renovation of existing buildings, or other physical facilities, to make physical changes necessitated by changes in the program, to meet standards required by applicable codes, to correct other conditions hazardous to health and safety of persons which are not covered by codes, or to effect a permanent improvement to the facility for any reason including aesthetics or appearance;

(b) Site improvement or developments which constitute permanent improvements to real property;

(c) Purchase and installation of fixed equipment necessary for the operation of new, remodeled, or renovated buildings and other physical facilities for the conduct of programs initially housed therein to include any equipment that is made a permanent fixture of the building; and

(d) Purchase of the services of architects, engineers, and other consultants to prepare plans, program documents, life cycle cost studies, energy analysis, and other studies associated with any new building, alteration, repair, demolition or improvement and to supervise the construction or execution of such projects.

67-5711. CONSTRUCTION, ALTERATION, EQUIPPING, FURNISHING AND REPAIR OF PUBLIC BUILDINGS AND WORKS.

The director of the department of administration, or his designee, of the state of Idaho, is authorized and empowered, subject to the approval of the permanent building fund advisory council, to provide or secure all plans and specifications for, to let all contracts for, and to have charge of and supervision of the construction, alteration, equipping and furnishing, repair, maintenance other than preventive maintenance of any and all buildings, improvements of public works of the state of Idaho, the cost of which construction, alteration, equipping and furnishing, repair, maintenance other than preventive maintenance exceeds the sum of thirty thousand dollars (\$30,000) for labor, materials and equipment, which sum shall exclude design costs, bid advertising and related bidding expenses, provided, that the director or his designee, and permanent building fund advisory council shall, in the letting of contracts under this section, comply with the procedure for the calling of bids provided in section 67-5711C, Idaho Code; provided, however, that this section shall not apply to the construction, alteration, equipping or furnishing or repair or maintenance other than preventive maintenance of public buildings under the jurisdiction and control of the board of regents of the University of Idaho; provided further, that public works for the Idaho transportation department, the department of fish and game, the department of parks and recreation, and the department of lands, except for administrative office buildings and all associated improvements, are exempt from the provisions of this section that relate to the administration and review of such projects by the director of the department of administration or his designee and by the permanent building fund advisory council. This exemption shall not relieve the Idaho transportation department, the department of fish and game, the department of parks and recreation, and the department of lands in the letting of contracts for public works, from complying with the procedures of section 67-5711C, Idaho Code, related to the advertising and bidding for contracts. The permanent building fund advisory council may adopt rules consistent with existing law including rules for a program of inspection and maintenance, to carry out the provisions of this act.

67-5711A. DESIGN-BUILD CONTRACTING AUTHORIZED.

Notwithstanding any other provisions of law to the contrary, the director of the department of administration, or his designee, is authorized and empowered, subject to the approval of the permanent building fund council, to employ the use of the design-build method of construction in the letting of any and all contracts for the construction, alteration, equipping, furnishing and repair of any and all buildings, improvements, or other public works of the state of Idaho. For the purposes of this section, a design-build contract is a contract between the state of Idaho and a

nongovernmental party in which the nongovernmental party contracting with the state of Idaho agrees to both design and build the structure, roadway, or other items specified in the contract.

67-5711B. EMERGENCY CONTRACTING AUTHORIZED DIVISION OF PUBLIC WORKS.

The director of the department of administration, the administrator of the division of public works, or a designee of either official may make or authorize others to make emergency public works contracts when there exists a threat to public health, welfare, or safety under emergency conditions; provided that such emergency public works contracts shall be made with such competition as is practicable under the circumstances. The administrator may declare an emergency when one (1) or more of the following conditions exist: an imminent life-threatening environment; or an imminent threat to property; or an imminent loss of significant state resources. The administrator may also waive the requirements of section 67-2309, Idaho Code, regarding written plans and specifications. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

67-5711C. CONSTRUCTION OF PUBLIC PROJECTS -- COMPETITIVE SEALED BIDDING.

(1) All construction contracts for public works shall be awarded to the lowest responsible and responsive bidder after receipt of competitive sealed bidding except as otherwise provided in sections 67-5713 and 67-5711B, Idaho Code.

(2) An invitation for bids shall be issued and shall include a project description and all contractual terms and conditions applicable to the public works.

(3) Adequate public notice of the invitation for bids shall be given at least fourteen (14) days prior to the date set forth therein for the opening of bids. Such notice shall include publication at least fourteen (14) days prior to bid opening in a newspaper of general circulation in the area where the work is located.

(4) Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rules, together with the name of each bidder, shall be entered on a record and the record shall be open to public inspection. After the time of the award all bids and bid documents shall be open to public inspection in accordance with the provisions of sections 9-337 through 9-347 and 67-5725, Idaho Code.

(5) With respect to a project having a written cost estimate of greater than two thousand five hundred dollars (\$2,500) but less than the public works limit established in section 67-5711, Idaho Code, the agency, if it does not perform the work with existing physical plant staff, must award a written contract to the lowest responsible and responsive bidder after soliciting at least three (3) documented informal bids from contractors licensed in Idaho to perform public works contracts, if reasonably available. Adequate public notice of the invitation for informal bids shall be given at least seven (7) days prior to the date set forth therein for the receipt of the informal bids. Such notice may include publication at least seven (7) days prior to bid opening in a newspaper of general circulation in the area where the work is located; or the agency may advertise the invitation for bids in appropriate trade journals, and otherwise notify persons believed to be interested in the award of a contract. Informal bids must be submitted by the contractor in writing in response to a prepared written document describing the project's scope of work in sufficient detail so as to enable a contractor familiar with such work to prepare a responsible bid. Nothing herein exempts an agency from the responsibility of utilizing formal plans and specifications if the work involves the public health or safety as described in chapters 3 and 12, title 54, Idaho Code. The agency must document receipt of the informal bids in the project file.

(6) Any personal property including goods, parts, supplies and equipment which is to be supplied or provided by a state agency for use in any public work, project, or preventive maintenance programs, whether the public work, project, or preventive maintenance program is constructed, undertaken or performed by agency in-house personnel, or by delegation pursuant to section 67-5710A, Idaho Code, or otherwise provided or supplied by the agency to a contractor, the personal property, goods, parts, supplies or equipment supplied or provided by the agency must be purchased or procured by the agency through the division of purchasing in accordance with the Idaho Code.

67-5712. PROJECTION OF BUILDING REQUIREMENTS REPORT.

The permanent building fund council and the director of the department of administration works shall on or before September 1 next preceding each regular session of the legislature prepare and submit to the governor a projection of building requirements of all institutions and agencies of Idaho. Such projection shall include new buildings, maintenance and repair of existing state owned buildings.

67-5713. CONSTRUCTION AND ALTERATION OF STATE CORRECTIONAL FACILITIES.

The administrator of the division of public works is authorized and empowered, subject to the approval of the permanent building fund advisory council, to use appropriated funds or other fund sources to construct or alter, either in whole or in part, state owned correctional facilities by inmate labor for the purpose of providing meaningful work and rehabilitation programs for inmates confined therein, or to have such construction accomplished by the competitive bid process as authorized by section 67-5711, Idaho Code, whichever the permanent building fund advisory council deems most appropriate. Further providing that no construction or alteration by inmate labor shall be authorized, unless plans and specifications for such construction have been accomplished by a licensed architect or engineer appointed at the direction of the council, and such final plans and specifications approved by the council. Further providing that such construction or alteration shall be performed under the direct charge and supervision of the administrator of the division of public works.

APPENDIX

A-1. Division of Purchasing Rules

IDAPA 38.05.01, Rules of the Division of Purchasing are available as a separate on this web site. [To access CLICK HERE.](#)

A-2. State Statutes Regarding Purchasing

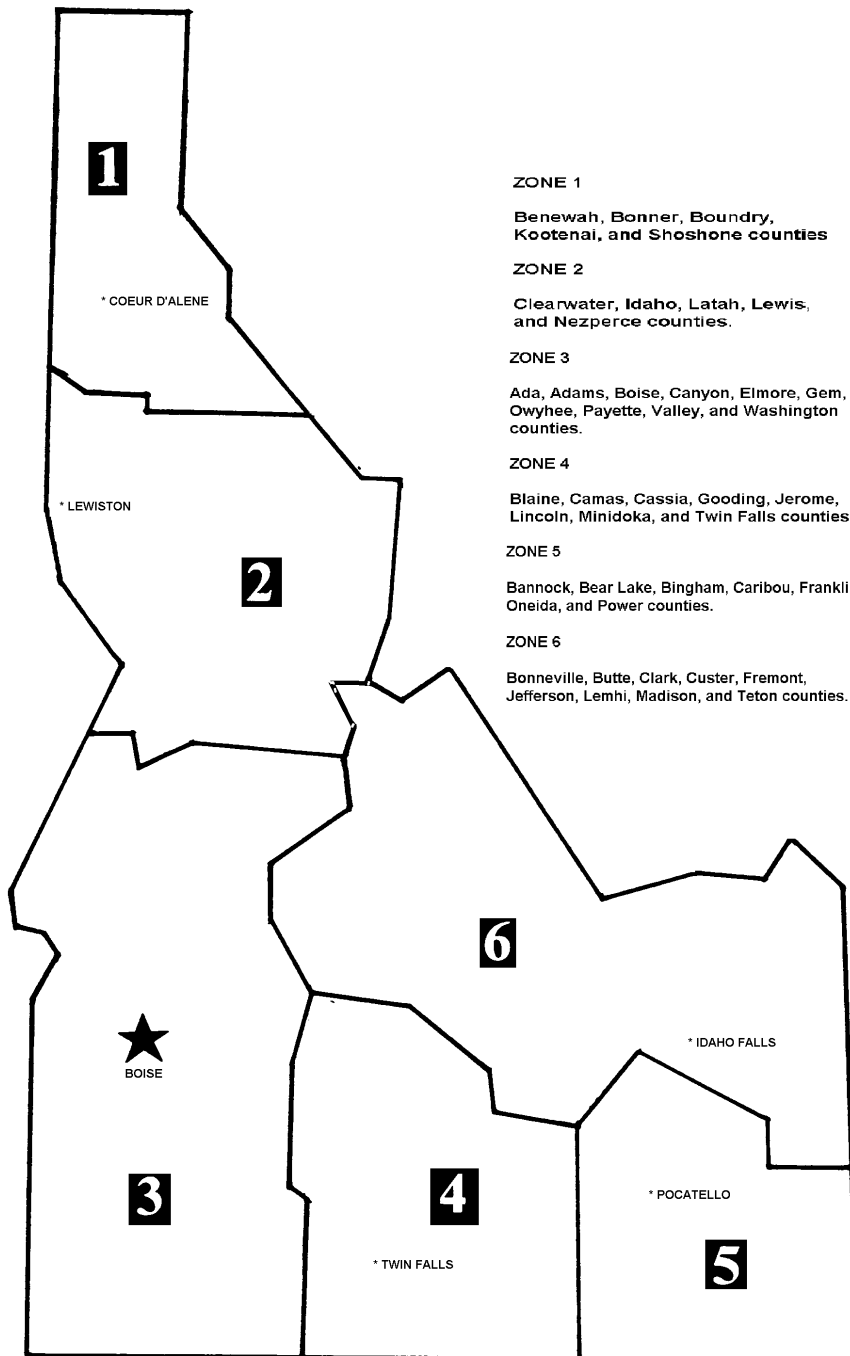
The Idaho Statutes that govern purchasing activity are found in *Idaho Code, Title 67 State Government and State Affairs, Chapter 57, Department of Administration*, specifically 67-5714 through 67-5745C . [To access CLICK HERE.](#)

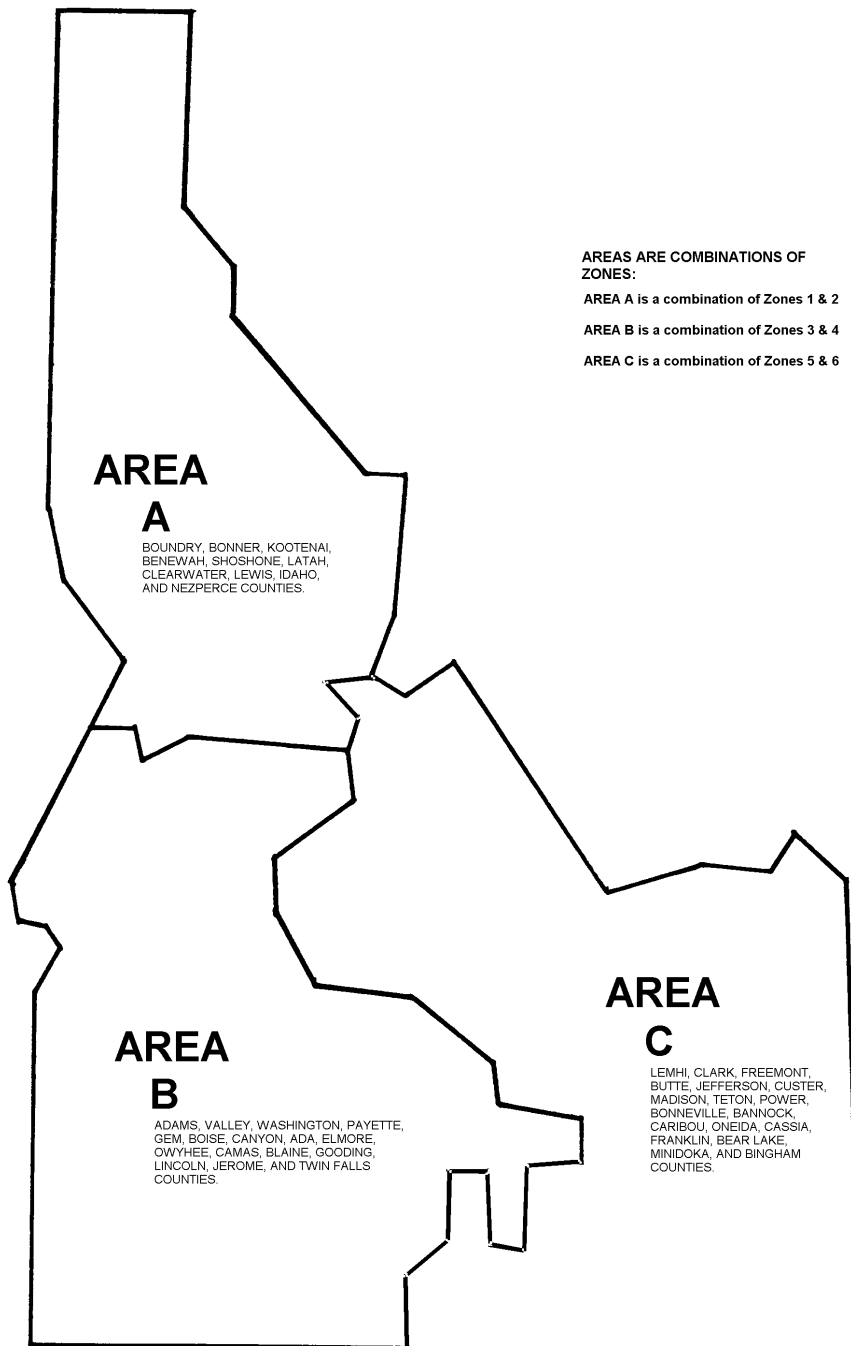
A-3. Reciprocal Preference Information

The most current preference information from each state is available from the State of Oregon web site. [To access CLICK HERE.](#)

A-4. Zone and Area Maps

Most statewide contracts (SBPO) are bid and awarded by zones (6) or areas (3) of the state. Bidders may submit bids and be awarded any number or all zones or areas. The bidding specifications will include detailed information regarding zones, areas, and delivery requirements





A-5. Frequently Asked Questions

The following are frequently asked questions of the Division of Purchasing. [CLICK HERE](#)

What is the Southwest Airline Travel Contract?

What is the P-Card?

What is the Idaho Reciprocal Preference Law?

Why should I use state contracts when I can get the same thing cheaper elsewhere?

What does "sole source" mean?

How do I order computers from the WSCA contracts?

What to do concerning unscheduled vehicle repairs?

What to do in an "emergency" situation?

Why do we have to get so many bids?

What is a "registered" vendor"?

What is meant by "significant Idaho economic presence"?

Do I always have to buy from statewide contracts?

What are the guidelines for maintenance agreements?